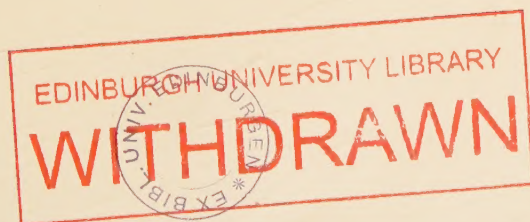


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VOLUME XXVI
FOR THE YEAR 1911



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FOUNDED 1887

TO ENCOURAGE THE STUDY AND ADVANCE THE KNOWLEDGE
OF THE HISTORY OF ENGLISH LAW.

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The Dear Books Series.

VOL. VI.

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YEAR BOOKS OF EDWARD II.

VOL. VI.

4 EDWARD II.

A.D. 1310-1311

EDITED
FOR THE SELDEN SOCIETY

BY

G. J. TURNER

OF LINCOLN'S INN, BARRISTER-AT-LAW

He [Serjeant Maynard] had such a relish of the old year books that he carried one in his coach to divert him in travel, and said he chose it before any comedy.

ROGER NORTH

C'est toute la tragédie, toute la comédie humaine que met en scène sous nos yeux l'histoire de nos lois. Ne craignons point de le dire et de le montrer.

ALBERT SOREL

LONDON
BERNARD QUARITCH, 11 GRAFTON STREET, W.
1914

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PREFACE

THIS volume contains all the reports of Hilary term and all save a few of those of Easter term 4 Edw. II. In almost every instance the report has been identified with the corresponding case on the record. The exceptions are where the particulars in the report are inadequate for the identification or where a report is misplaced and really belongs to some earlier term. In the preparation of the text two new manuscripts have been used, that is to say, one which was recently purchased by the Trustees of the British Museum from the present owner of the Phillipps Collection, the other a manuscript in the University Library at Cambridge which had escaped the notice of our late Literary Director. More use has been made of the manuscript here called Y than in previous volumes of this series. It will be remembered that these reports are arranged according to subject-matter, and not chronologically. A very large number of them are undated, and dates can only be assigned to them by identifying them with versions in other manuscripts or where, as often happens, there are no other versions, by identifying them with cases on the records of the Court. This has involved prolonged research, which has materially delayed the publication of the volume. It may here be noticed that this manuscript contains a considerable number of reports of the first three years of the reign which have not been printed. Professor Maitland was unfortunately unacquainted with it when he published his first volume, and owing to absence from London he was unable to make full use of it in his subsequent volumes.

In the present volume the variant readings of the text have been printed somewhat more lavishly than in previous volumes, in order to show as clearly as possible how the different manuscripts are related to one another. The relation between them is of great importance in the history of the Year Books, and may perhaps assist in solving some of the problems of their origin and purpose. The cases are here arranged according to the writs on which they are based, and not, as in the first four volumes, according to the order in which they occur in one of the

manuscripts. The Table of Cases at the end of the volume has been constructed exceptionally fully, and miscellaneous observations on some of the cases have been introduced there. For the most part they are too long for the footnotes, and would have been out of place in the Introduction. Another new departure is the addition of Christian names to the Index of Persons, and the insertion of a separate Index of Places. It is hoped that these innovations will meet with the approval of the Society generally.

Though much has already been written on the origin of the Year Books and the question of their official character, the Introduction is largely concerned with this subject. It has been used to put forward a new theory, which may be called the 'Pamphlet' theory, of the origin of the Year Books as we know them. It would be absurd to expect that it will commend itself to all the members of the Society; but it may be hoped that the hitherto unnoticed letters patent by which James I. (acting on his well-known writ of Privy Seal published by Rymer) appointed two official reporters, the reference to the Abridgement produced by 'Lincoln's Inn Labour,' and several other notes and documents, may be found useful by legal historians. The history of the manuscripts, which also occurs in the Introduction, and the particulars of the quires and folios which are printed in Appendix I., relate to the whole series and not to this volume especially. The particulars of the quires may be of little interest to the reader, but to the editors of subsequent volumes they may prove to be of service.

In the first section of the Introduction I have developed some suggestions made by Mr. W. S. Holdsworth in his *History of English Law*, and I have found Mr. Soule's little known but valuable article on the 'Bibliography of the Year Books,' published some years ago in the *Harvard Law Review*, of assistance. I am indebted to the Right Honourable Sir Frederick Pollock, one of our Literary Directors, for reading part of the proof sheets and drawing my attention to various errors; and to Mr. R. F. Norton, K.C., for some useful suggestions with regard to the first section of the Introduction. I have also to thank Mr. D. T. B. Wood and Mr. R. Flower, of the Manuscript Department at the British Museum, for their assistance in the work of constructing the first Appendix.

G. J. TURNER.

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INTRODUCTION

1. The Origin of the Year Books.
2. The Abridgements.
3. The Manuscripts and their Owners.
4. The Relations of the Manuscripts to one another.

1. THE ORIGIN OF THE YEAR BOOKS.

Few of the many topics which the late F. W. Maitland discussed in the introductions to the first three volumes of this series have aroused more interest than the Origin of the Year Books. In his opinion they had as their primary object instruction for pleaders rather than the authoritative fixation of points of substantive law.¹ He saw in them the outcome of private enterprise, and could not believe that they were in any sense official. They, or rather the earliest of them, seemed to him to be students' notebooks and nothing more.² Of late a rather wider application has, perhaps, been given to Maitland's opinion than his own words will warrant, for he expressly declared that his belief related to 'the earliest of them,' and that he would not speak 'of an age that he had not observed.'³ The time has now come when an attempt should be made to study the origin of the Year Books in the light of their later history. There is probably no period in their development which cannot contribute something of importance to the elucidation of the subject. Some among us may think that the wisest method of proceeding would be to endeavour to ascertain the conditions under which the Year Books were produced in their last, and perhaps their best-known, days, and then to work backwards step by step. Such an investigation would be long, laborious, and in this volume altogether impossible. All that can be attempted here is to collect a few notes, to discuss a few problems, and to suggest a few directions in which further research may usefully proceed.

The older opinion that the Year Books were in some sense official rested primarily on certain words of Edmond Plowden, who published

¹ *Year Book Series*, vol. i. p. xiv.

² *Ibidem*, vol. iii. p. xii.

³ *Ibidem*.

his 'Commentaries or Reports of the Reigns of Edward VI., Mary, Philip and Mary, and Elizabeth' in the year 1571, and died fourteen years later at the age of sixty-seven. They have been translated as follows :

The first, for that in olde tyme (as I haue of credyt herde) there were fower reporters of our cases of Lawe, which were chosen men, and had an yerely stipende for their trauaile therein payd by the Kinge of this Realme, and they conferred al together at the making and setting forth the report. And their report, for the numbre of the reporters, and their approued learning caried great credit, as justly it deserued.¹

Plowden's Commentaries have always enjoyed a high reputation for accuracy, and his own integrity has never been impeached. We should not assume that he invented the story, which he declares that he 'heard on good authority,' merely because at first sight it appears improbable. Admitted to the Middle Temple in 1538, he spent his early years at the Bar in taking notes of cases. He soon acquired a large practice; in due course he held the offices of reader, double reader and treasurer of his Inn, and in 1558 was called to the degree of serjeant-at-law.² His habit of note-taking would have interested him in the history of the Year Books and the question of their authorship. His position at the Bar and in his Inn was such that he could have learnt all that ancient tradition had to say on these subjects; and it may be that he had before him written evidence unknown to us in corroboration of tradition, such, for instance, as memoranda on the fly leaves and margins of manuscripts which have long since perished or disappeared. Moreover, when Plowden entered the Middle Temple in 1538 the Year Books were no mere relics of a distant past. Two years earlier men were certainly engaged in their compilation, and it was not until 1548, ten years after Plowden entered the Middle Temple, that the Year Books for 13-14, 18, 26, 27 Henry VIII. were printed and published. True it is that the long gaps in this series might suggest that law reporting was at a low ebb in the reign of Henry VIII., but none the less it is clear that Plowden, the young note-taker, can scarcely have failed to know personally some of the older reporters. And it must not be assumed that no reports were compiled in those years

¹ Prologue to the edition of 1578. Plowden's own words are :

Ilz y auoient quater Reporters del nostre cases del ley, queux fueront homes esliu & auoyent vn annuall stipend pur lour trauayl en ceo, pay par le roy de cest Realme, et ils conferront ensemble al fesance et produiment de le report Et lour report, pur le number de

les reporters et lour approbate scauoir port graund credite, come il de droit merite.

² The writ, dated 27 October 1558, by which he was created serjeant, abated by the death of Queen Mary before it was returnable and was not renewed by Queen Elizabeth. As to these facts see *Dictionary of National Biography*.

which are unrepresented in the printed Year Books, or that reporting suddenly ceased in the year 27 Henry VIII., with which the printed Year Books end. Numerous MSS. in the libraries of the British Museum and Lincoln's Inn show that reporting was still being carried on, though somewhat intermittently, throughout the reigns of Edward VI., Mary, and Elizabeth. Some day these reports will be examined critically, and we shall be able to appreciate their value more definitely. In the meantime we shall do well to remember that the printing of a report was a monetary speculation, and that it was probably due to commercial reasons rather than to professional inefficiency that many of the years of Henry VIII. are unrepresented in the Year Book series, and that few of the reports of the sixteenth century have been printed at all.

Next we may notice that the tradition which Plowden mentioned was officially accepted some thirty years after his death when James I., by a writ of privy seal dated 24 October 1617, provided for the appointment of two law-reporters at an annual stipend of £100.¹ In a recital in this writ he is made to say :

In regard whereof we have thought good to revive and renew the auncient custom of appointing some grave and lerned lawyers to attende our courts at Westminster for the reporting of the judgements and resolutions of lawe which there shall passe from time to time, whose duty wee intende to be to report (though compendiousle yet truly and narrativelie) that which passeth according to the auncient manner.

Some years earlier, Francis Bacon, when attorney-general, had urged the king to appoint such reporters, and in a letter to him had stated :

But to give perfection to this work his Majesty may be pleased to restore the ancient use of Reporters, which in former times were persons of great learning, which did attend the Courts at Westminster, and did carefully and faithfully receive the Rules and Judicial Resolutions given in the King's Courts, and had stipends of the Crown for the same ; which worthy institution by neglect of time hath been discontinued.²

It may be objected that Bacon merely repeats here what he had read in the preface to Plowden's Commentaries ; but even so the

¹ Patent Roll, No. 2147, entry 2. This writ is printed in Rymer's *Foedera*, vol. xvii. p. 27, and also in Spedding's edition, vol. xiii. p. 264.

² Spedding's edition, vol. xii. p. 86.

'The persons following may be thought on, as men not overwrought with practice, and yet learned and diligent, and conversant in Reports and

Records. There are six names whereof three only may suffice according to the three Principal Courts of law, . . . Mr. Whitlock, Mr. Noie, Mr. Hedley, Mr. Hackwell, Mr. Courtman, Mr. Robert Hill' (*Ibidem*). Hedley is the same person as Hetley, who became an official reporter (p. xix below).

repetition of the statement¹ by such an exalted and well-instructed person is in itself testimony in favour of its correctness. Few men of his period had better opportunities than Bacon of forming a well-considered opinion on the subject. He was sufficiently interested in history to write a life of Henry VII., and presumably he knew what value to attach to tradition. He was the son of a Lord Keeper of the Great Seal, who was born in the year of the accession of Henry VIII. and lived till late in the reign of Elizabeth. As a young man he was brought in contact with 'grave and learned men' who had sought his father's favour. Finally, he was so keenly interested in law reporting, and so firmly persuaded of the need of an official series of reports, that when he became Chancellor he persuaded the king to take steps for the appointment of salaried reporters with well-defined duties.

Let us now turn from Bacon to his great rival, Sir Edward Coke, in order that we may learn what he has to say about the Year Books. Born in 1552, he was admitted to the Inner Temple in 1572, and called to the Bar just six years afterwards. In 1593 he became attorney-general, and in 1600 began to publish his famous Reports. Thus he was Bacon's senior, both in age and standing at the Bar; and he was Plowden's junior by little more than a generation. Like Bacon he agreed with Plowden about the four reporters having been appointed by the king. He refers to them in the Preface to the third part of his Reports, which was published in 1602:

The Kings of this realme, that is to say, Ed. 3, Hen. 4, Hen. 5, Hen. 6, Ed. 4, Ric. 3, and Hen. 7, did select and appoint foure discreet and learned professors of Law to report the judgements and opinions of the reuerend judges as well for resolving of such doubts and questions wherein there was . . . diuersitie of opinions, as also for the true and genuine sence and construction of such Statutes and Actes of Parliament, as were from time to time made and enacted.

We might infer from this passage, in which he omits the reigns of Edward I., Edward II. and Richard II., that he had made no special study of the manuscripts of the Year Books, and that his knowledge of them, though undoubtedly considerable, was confined to those which were printed when he wrote his own Reports. This inference

¹ It should be noticed that William Fleetwood, whose Table to Plowden's Reports appeared in the edition of 1578, is likely to have been acquainted with the Bacons, for at one time he lived at Bacon House, in Foster Lane. (*Dict. Nat. Biog.* xix. 268.) He possessed manuscript Year Books of which at least two still

exist. He was about seventeen years younger than Plowden, whom he survived nine years. If, then, Bacon was acquainted with Fleetwood, he enjoyed opportunities of hearing what one of Plowden's contemporaries (who was himself interested in law reporting) thought about Plowden's famous statement.

receives some confirmation from the fact that he elsewhere states that the Year Books began with Edward III., and so plainly shows that he was either unacquainted with the Year Books of Edward II., which were still in MS., or that he thought that they were reports of a special character. He observes in the Preface to the third part of his Reports :

And the reason that the former Reports were in the French tongue was for that they begun in the raigne of king Edw. the third.

Coke also omits the reign of Henry VIII. in the first of the two passages just quoted ; but this is because he thought that the reports of that reign were not compiled by the same class of reporters as those of the earlier Year Books. He gives his reasons for this opinion in a subsequent passage in the same Preface :

But to retourn again to these graue and learned Reporters of the Lawes in former times, who as I take it, about the end of the raigne of Hen. the 7 ceased ; between which and the cases reported in the raigne of Hen. the 8 you may obserue no small difference. So as about the end of the raigne of Hen. the 7 it was thought by the Sages of the law that at that time the Reports of the Law were sufficient ; wherefore it may seeme both unnecessary and unprofitable to haue any more reports of the law, but the same causes that moued the former doe require also to haue some more added unto them.

We have here not merely Coke's opinion that the system of law reporting described by Plowden prevailed until the end of the reign of Henry VII., but also the interesting statement that he could distinguish a change in the manner of reporting dating from that time. Unfortunately he has not explained what he considered to be the chief features of the new manner. Possibly one of them is the occasional introduction of the personal opinion of the reporters, which is not often found in the Year Books of earlier reigns than that of Henry VII. Obviously a reporter who speaks for himself cannot have flourished in the days described by Plowden, when there were four reporters who conferred together in the making and producing of the reports. Elsewhere Coke describes the difference between the method of citation which prevailed in his day and that of some unspecified earlier period. But this particular change which he describes was probably not one of the features of the new manner of reporting which he noticed in the reign of Henry VIII. Coke's words¹ are as follows :

¹ Prologue to the tenth part (in Latin and English). The Latin text of this passage is as follows :—

Antiquus ille argumentandi mos ad septum curiae per Seruientes ad legem et Iuris consultos quos Apprenticios

uocamus prorsus immutatur. (1) Ii uix unquam librum uel auctoritatem nominatim prodixerunt, ut uidere est in 40 Ed. 3, &c. sed *Est tenuis &c.*, uel simile, qui modus est in quaestionibus argumentis (quas uocamus Moots a le barre)

The ancient order of arguments by our seriants and apprentices of law at the bar is altogether altered. 1. They neuer cited any booke case or authoritie in particular, as is holden in 40 Ed. 3., etc., but 'est tenuz ou agree in nostre liures ou est tenus ou adiugé in termes', or such like, which order yet remaines in moots at the bar in the Inner Temple to this day. 2. Then was the citing generall, but alwaies true in the particular; & now the citing is particular, and the matter many times mistaken in generall.

This is vague and not very illuminating; but we may notice that in the reigns of Henry VII. and Henry VIII. there are many references to earlier Year Books under the designation of 'livres.' Apparently men were beginning to treat them more and more as works of authority, and to look upon them less and less as books for the instruction of students. In 27 Henry VIII. an apprentice says in the course of his speech:

(a) In anciens ans et livres est nul mencion fait d'ascun 'use' et si ascun 'use' avoit esté al *common ley* il vouloit aver esté spécifié in anciens livres de nostre *ley*.¹

It is the judges, however, who refer to the Year Books the most frequently:

(b) *Fitz.* Ceo est par cause qe le jurie est pris al barre; et encontre vostre livre jeo puis moustrer a vous 4 livres adjugez le contrary.²

(c) *Jenour Prenotary.* Et jeo puis moustrer a vous un precedent pur ceo. *Fitz.* dit que il purra moustrer moult livres com il ad dit.

Et puis a auter jour *Jenour* moustra son livre a *Fitz.* Et come *Jenour* dit a moy *Fitzh* dit . . .³

(d) Et un dit a luy que cest cas est en mesme le report de anno 12 du roy qe ore est.

Fitz. Mettez cest cas hors de vostre livres, car il n'est ley sanz doubt.⁴

(e) Et plusours apprentis arguerent all contrary. *Fitz.* La ley est clere in cest point et jeo puis moustrer a vous divers livre adjugez in cest point come j'ay dit.⁵

In another case the reporter expresses his own views on the subject under discussion:

(f) Et puis les justices furent in purpos a doner jugement pur les heirs generals, pur ceo que est trové pur eux par verdit. Et coment ils avoient livre il voloient aviser. *Quod nota bene, quia novel cas.*⁶

in interiori Templo huc usque retinetur.
(2) Eo temporis annotatio fuit generalis, uera autem semper in particulari; hodie, e contra, annotatio est particularis, multocius uero abs re in generali.

¹ 27 Henry VIII. Easter, p. 9, case 22.

² *Ibidem*, Easter, p. 1, case 2.

³ *Ibidem*. See also *Jenour's* remark, *ibidem*, p. 5, case 14. He frequently

took part in the discussions in Court.

⁴ *Ibidem*, Trinity, p. 23, case 21.

⁵ *Ibidem*, p. 28, case 14. *Fitzherberd* often speaks as though he had many Year Books in his possession.

⁶ 21 Henry VII. p. 36, case 44. For similar cases see Trinity 1 Ed. V. case 6, p. 4, *Mich.* 1 Ric. III. case 2, p. 4.

But although these and similar passages give vague references to the Year Books, and not to specific cases, it is not improbable that specific cases were sometimes cited in court. We can scarcely doubt that when a judge or counsel said that he had authority in the Year Books for a proposition he forthwith read to the court the case on which he relied. The reporter gives no particulars of the case cited for the simple reason that, the Year Books being for the most part still unprinted, and the foliation differing with the manuscripts, a particular citation would have been useless.

And here it must be noticed that all these vague references to earlier reports occur in the reigns of Henry VII. and Henry VIII. Similar references are very seldom to be found in the Year Books of Edward II. It is true that in the Year Books of that reign a case or a precedent is sometimes mentioned, but it is cited not by a vague reference to a report but by an appeal to the memory. The counsel or judge who cites it supposes that all present will remember the case or decision. It was evidently not until Tudor times that the Year Books came to be looked upon as a source of authority for the court; and even then they seem to have been cited very tentatively. There can be little doubt, however, that the change in the manner of citation to which Coke refers was the change from the vague manner of citation adopted by the reporters of the early Tudor period, and the citation by precise references to which the lawyers of the early Stuart period were accustomed. But this change cannot be the 'no small difference' which Coke observed between the reports of the reign of Henry VII. and Henry VIII., for the vague citation may be noticed in the reign of Henry VII. and the precise citation with which Coke was familiar had not begun in the reign of Henry VIII.

But although Coke's statement that in the ancient order of argument 'they never cited any book cases or authority in particular,' need present little difficulty to us, the English words 'as is holden in 40 Ed. 3' with which he continues his sentence certainly suggest a judicial decision on the manner of citation, and no such decision is to be found. It is obvious, however, that they are a very unsatisfactory translation of the Latin 'ut uidere est in 40 E. 3.'

It is remarkable that the reports of the year 40 Edward III. as printed by Tottel in 1555, and as subsequently reprinted, differ in an important respect from those of other years of Edward III. They contain, and the reports of no other year of this reign contain, a large number of references to other reports, and these, unlike the references in the Year Books of Henry VII., and more especially of Henry VIII., are for the most part specific. But the reports for the eleven years

40-50 Edward III. were printed for the first time between the years 1518 and 1520 by Pynson, each year being separately foliated, so that each year could probably be obtained as a separate part. Now, Pynson's text of these reports contains no references to other Year Books. Such references appear for the first time in Tottel's reprint published in 1555, and then only in the reports of 40 Edward III. Nearly all of them occur at the end of the cases, but a few of them may be noticed at the end of speeches. Apparently they are the work of some Tudor lawyer who annotated his copy of Pynson's printed text of the year 40 Edward III. ; and it was from this annotated copy that Tottel printed his text in 1555. Thus, there is no real resemblance in point of citation between the Year Books of Henry VII. and Henry VIII., and the Year Book of 40 Edward III. as originally printed ; and if Coke thought that there was, he deceived himself.

The most conspicuous example of a vague citation in the annotation of the reports of 40 Edward III. is :

Il est tenus en nostre livers que tenant a volunt avera ayde de son lessour.¹

As a general rule, however, the references are given to particular folios of printed texts of the Year Books :

Et anno 37 Hen. VI. fol. 2. Et anno 21 Ed. fol. 20. Horewood ad vouché cest liver etc.²

Et pur le darrein matter mon seignior Fitz Herbert ad vouché le liver de 37 Hen. fol. 38.³

Mes uide M. 3 E. 4 fol. 12 ou cest liver e auters sont vouches.⁴

The unknown annotator of the year 1555 lived, so it would seem, at a time when the old manner of citation was rapidly giving place to the new.

But however ambiguous Coke's account may be of the change in the manner of reporting which he noticed at the beginning of the reign of Henry VIII., he has emphatically recorded his belief that until then four grave and learned reporters were appointed from time to time by the king. This is important ; for when we find that Plowden's story of four reporters who were paid by the king was accepted by Coke as well as by Bacon, we can scarcely reject it as worthless. There is at least a presumption that in some former age there was an organised system of law reporting⁵ under official patronage, even if the reporters were not always four in number, and were not directly appointed and

¹ Year Book, 40 Ed. III., edition of 1675, Trin., p. 31, case 12.

² *Ibidem*, Hilary, p. 12, case 26.

³ *Ibidem*, Easter, p. 24, case 25.

⁴ *Ibidem*, Mich., p. 37, case 10.

⁵ This also seems to be Mr. W. S. Holdsworth's opinion (*Hist. of English Law*, ii. p. 456).

paid by the king. We should look to the general purport of Plowden's statement rather than to the exact words in which it is couched.

Those who hold that the Year Books were in no sense official maintain that Plowden's statement is inaccurate in detail and untrue in substance. Their criticism turns chiefly upon four points. First they say that if the reporters were appointed and paid by the king some record would be preserved of their appointment, whereas none has yet been discovered. In point of fact Plowden's statement is that they were paid by the king, and not that they were appointed as well as paid by him. But even if it be admitted for the sake of argument that a royal payment implies a royal appointment, the fact that well-indexed calendars of the patent rolls from the reign of Edward I. to that of Richard III., and also for the reign of Henry VIII., have been printed, published and much studied constitutes no valid objection to the possibility of the reporters having been appointed by the king, for many royal appointments were not made by letters patent. The Lord Chief Justice of the King's Bench, for instance, was appointed by writ, and appointments by writ were not regularly recorded upon the patent rolls, nor of necessity upon any of the rolls of the chancery. We may search in vain for any trace of the writs by which the serjeants-at-law were created in the thirteenth and fourteenth centuries. We know, however, from Sir John Fortescue's '*De Laudibus Legum Angliæ*,'¹ that in the reign of Henry VI. the Chief Justice of the Common Bench by the counsel of all the Justices chose seven or eight persons and presented their names to the Chancellor in writing, and he by virtue of the king's writ directed that they should come before him on a certain day to take upon them the degree and estate of serjeant-at-law. It is therefore possible that the reporters, like the early serjeants, were appointed by unenrolled writs; but it is also possible that they were appointed in the name of the king without writ by the Lord Chief Justice of the Common Bench.

The second objection is that no record has yet been noticed of the payment of an annual stipend to any one of the compilers of the Year Books. But here, again, we cannot assume that such payments were never made merely because they have not been noticed. The Issue Rolls of the fourteenth and fifteenth centuries, on which we might most reasonably expect to find them, are bulky, unindexed and not much consulted. From the end of the reign of Edward IV. until the ninth year of Elizabeth there are no Issue Rolls, but research upon the Tellers' Rolls, which in some respects take their place, is subject to the same difficulties as regards size and indices; and they have been less often consulted than the Issue Rolls. Moreover, many entries of annual pay-

¹ Chapter 50 and p. 117 r^o in the edition of the year 1616.

ments found on these rolls afford no indication of the services rendered by those to whom they were made.¹ This second objection, therefore, carries little conviction, especially with reference to the later period of the Year Books, when the rolls were becoming inconveniently bulky. In any case there is no occasion for assuming that Plowden's words represent facts with absolute accuracy. When he says that he has heard that four reporters had received an 'annual stipend for their labour . . . paid them by the king' the truth may be that certain favoured reporters had temporarily received some remuneration from a public source with the king's approval. Such a temporary payment may have been made to encourage law reporting at a time when it was difficult to find well-qualified reporters. Some of the kings of England—Richard III., for instance²—were sufficiently interested in legal proceedings to take their seat on occasion in the King's Bench; and it would not be remarkable if one of the kings had directed the reporters whom he saw in court to supply him with copies of their reports, and had granted them in return for this service annuities or stipends out of the Privy Purse. If, however, any of the reporters had received salaries for their labours, even for a short period only, tradition would almost certainly remember the fact of the payment and forget that it had not been made from time immemorial.

A third objection is that different manuscripts of the Year Books often give entirely different reports of the same case; and this obviously shows that their authors were working independently of one another, and not in the concerted fashion described by Plowden. But it is far from certain that there were more than four or five reporters normally at work in the reign of Edward II., and until the manuscripts of the fifteenth and sixteenth centuries have been examined critically it cannot be assumed that the reports found in the later Year Books were not the work of four men who conferred together in their production. Nor is there any necessary antagonism between Maitland's theory that the Year Books were originally students' note-books, and Plowden's statement to the effect that they were produced by professional reporters, for the theory relates to the earliest days of the Year Books, and the statement may relate to the early Tudor period. Young barristers and students in the days of Edward I. and Edward II. may have taken notes with a view to qualifying themselves by subsequent perusal and study to become serjeants-at-law. There may even have been some

¹ A payment to Robert Rodes' 'apprenticius ad leges' may be noticed (*Issue Rolls*, 18 Hen. VI., No. 736, m. 9). See also the case of Sir

Nicholas Bacon (p. xxxix below).

² Edward Foss, *Judges of England* iv. 480. See also *Ibidem*, p. 215.

enthusiasm for this work when it was initiated, but it is scarcely credible that it was of long duration. Careful note-taking is not now, and probably never has been, a popular mode of instruction. It was a difficult pursuit in the Middle Ages, much more difficult than it now is, in an age of cheap writing material, steel pens, and above all good blotting paper. The wise student would soon find that he could learn more by reading good notes made by practised reporters than by writing bad notes himself. In short, it is not difficult to believe that private note-taking gave place to an organised system of law reporting, which may in course of time have attracted royal patronage.

The last objection to Plowden's statement is that if the reports were official we should expect that the originals, or at all events copies of them, would be carefully preserved by officers of the court, whereas as far as we are aware our manuscript Year Books always come to us from private hands. A complete answer to this may be found in the fact that James I. appointed two reporters by letters patent under the Great Seal of England¹ with an annual stipend of £100 each, and yet neither the originals nor copies of their reports are to be found among our public records. One of these reporters was Edward Writington and the other Thomas Hetley, both barristers of Gray's Inn.² Writington has sometimes been confused with Thomas Widdrington, who was Commissioner of the Great Seal in 1648 and Speaker of the House of Commons in 1656. Thus, on the first folio of a manuscript³ volume of reports compiled by Thomas Widdrington in the King's Bench and Robert Paynel in the Exchequer we have the following memorandum, in the handwriting of Francis Hargrave :

This Widd. with Thomas Headly were the two who in Mich. term 15 Jac. by Privy Seal were appointed the king's reporters of cases in all the courts of Westminster. This is enrolled at the rolls. By this privy seal⁴ they were commanded to report the arguments at the bar, and the resolutions of the Bench and to communicate their reports to the Lord Keeper and Judges for the time being. For this they were each to have a salary of 100^{li}. per annum, and the first case they reported was the great case⁵ of Burrell and Goff *in cane*. for tithes of houses in London, and the place assigned them was at the feet of the Lord Keeper Bacon who had promoted them.

¹ Patent Roll, No. 2131, entries 3 and 4.

² Hetley was member for Huntingdon in the first Parliament of James I. and Writington was member for St. Mawes in the Parliament which met on 16 June 1621. *Return of 1878*, i. 442, 450.

³ Lansdowne MS. 1083, fol. 1. See also *Ibidem*, fol. 356, and Hargrave

MSS. 38 and 39.

⁴ The writ of privy seal is enrolled on the Patent Roll. (*Patent Roll*, 2147, entry 2.) This is unusual. Such a writ is the king's direction to the chancellor to prepare the letters patent, and it is the letters patent, and not the writ, which are usually enrolled.

⁵ Hargrave MS. 386, fol. 256 r^o.

These observations were no doubt derived from a manuscript volume of reports ¹ of cases heard in the reigns of James I. and Charles I. compiled by Sir Henry Calthorpe, who for a few weeks in 1635 held the office of recorder of London, and was appointed attorney-general of the court of wards and liveries in January 1636. Unfortunately the French of the report is so decadent and its handwriting so cramped that its correct transcription is a matter of no little doubt. The following version must therefore be read as a tentative copy :

Mesme cel terme un privye seale fuit direct a Mounsieur Headdleye et al Mounsieur Writtington de Grayes destre les reporters del roy en toutes les courtes al Westm. en qe il fuerent commandes de reporter les argumentes de serjeantes et counsaylors al barre et auxi les argumentes de judges les resolutions de queux il fuerent de reporter et auxi leurs opinions en le bref et apres qe ils avoient fait un report de eux il fuerent dofrir eux as judges destre lieu et donqe le Seignur Keaper pur le temps esteaunt averoit le perusall de eux. Et il avoient le fee de 100^{li} par an doné as eux severalment pur leur payements, et il pristeront leur seate as feete de Seignur Keaper sur largument del cas de desmys qe fut le primer cas qe il reportent.

In the MS. this note is written immediately after the report of the case of *Goff and Burrell*, otherwise known as 'The Case concerning the payment of Tythes in London.' Of this case Sir Henry Calthorpe also produced an English version which will be found in his 'Reports of Speciall Cases touching severall customs and liberties of the city of London' published in January 1618.

Writington's reports were never printed, and it may be that they no longer exist even in manuscript. Certain unprinted reports, however, which have been attributed to Widdrington, may really have been compiled by Writington.² In Lincoln's Inn library there is a volume containing 288 cases in all with the words 'Widrington's Reports' written on its cover. It consists of reports of Michaelmas 2 James I. and the two following terms, which are then followed by others of the years 17-21 James I. Their dates certainly suggest that they were compiled by Writington rather than Widdrington; for the latter was not admitted a member of Gray's Inn until 14 February 16 James I.³ It is certainly improbable that he began to compile the years 17-21 James I. so soon after his admission to Gray's Inn, and it is almost impossible that he could have been the author of the reports of Mich. 2 James I. and the two following terms. Moreover a note on the cover of this volume says

This does not seem to be the book referred to in Salk. 137 by the name of Widdrington.' There would certainly have been a good reason for

¹ Hargrave MS. 386, fol. 259 v^o.

² Coxe's MS. lxxxi.

³ *Gray's Inn Admission Register*, p. 153.

the appointment of Writington, if he had already acquired some experience in reporting in the early years of the reign. His career at the bar seems to have been undistinguished. He was elected reader at Gray's Inn on 8 November 1622,¹ and in the following February the masters of the bench complained that 'Mr. Writington hath utterly refused to read this next Lent, and so the house is destitute of a reader.'² In the following May he was fined £100 'for failing to read the last Lent,' but the fine was reduced to £40 a month later.³ He seems to have been removed from the Bench of his Inn when the fine was imposed, for in November 1637 the Pension Book records that 'Mr. Writington, one of the counsell of Yorke, is called up to the Bench, and to take his place according to his antiquity.'⁴ Apparently there are no reports either at the British Museum or at Lincoln's Inn Library which can reasonably be supposed to have been compiled by Writington in the reign of Charles I. He certainly had no share in the production of the volume in the Hargrave collection with the note on its fly-leaf about the official reporters, for that volume concludes with the words 'Explicit annus quartus Caroli per Thomam Widdrington in Banco Regis et Robertum Paynel in Scaccario.'

Hetley's career was rather more distinguished than Writington's. He acquired, so it seems, a large practice, became a serjeant in Michaelmas term 21 James I., and was knighted a few weeks later (17 November 1623). Like Writington he refused to read at Gray's Inn and was removed from the Bench; but he was called there again two years later 'to com when it pleaseth him.'⁵ A volume of reports bearing his name was published in 1657, more than twenty years after his death. They extend from 3 to 8 Charles I. Although Hetley was at one time an official reporter, his volume received no special recognition either from the judges or from the legal profession generally. Baron Clerke, by whose authority they were printed, contented himself with certifying 'I conceive these reported cases may be very useful, and so fit to be printed.' Nor can they have been highly esteemed by the profession, for no second edition of them was published. It is not unlikely that Hetley ceased to be an official reporter when he became a serjeant, and that the printed reports which bear his name were really entirely unofficial. They relate solely to the Common Bench, in which court he would as a serjeant have been practising normally. During two of the years with which they are concerned—namely, 3 and 4 Charles I.—Thomas Widdrington was, as already stated, responsible for reports in

¹ R. J. Fletcher, *Pension Book of Gray's Inn*, vol. i. p. 251.

² *Ibidem*, p. 255.

³ *Ibidem*, pp. 257, 258.

⁴ *Ibidem*, p. 329.

⁵ *Ibidem*, pp. 223, 283.

the Common Bench, and Robert Paynell for others in the Exchequer. This suggests that if official reporting were discontinued soon after its institution, those who were sufficiently interested in the work to report unofficially, may have arranged not to compete with one another, and to make their notes in different courts.

The letters patent by which Writington and Hetley were appointed reporters have never been printed. Those granted to Writington read as follows :

Rex omnibus ad quos etc. salutem. Cum per regalem ordinacionem nostram nuper factam et sub magno sigillo nostro Anglie firmatam quam etiam in curiis nostris publicari et irrotulari mandauimus ea intencione ut res iudicate et acta in curia nostra prolata tradantur posteris in omne tempus cum diligencia et fide constituerimus fore duos viros graues et discretos et in legibus nostris solide eruditos qui res iudicatas et acta predicta de tempore in tempus excipiant et perscribant prout per predictam ordinacionem plenius liquet. Nos igitur de erudicione discrecione et integritate Edwardi Writington de Grayes Inne armigeri ad plenum informati et plurimum confidentes assignauimus nominauimus et constituimus ac per presentes pro nobis et successoribus nostris assignamus nominamus et constituimus predictum Edwardum Writington unum officarium nostrum a Commentariis Anglice a Reporter ad res et acta in curiis nostris respectiue iudicata et iudicanda de tempore in tempus excipienda et perscribenda Habendum et tenendum officium predictum prefato Edwardo Writington quamdiu se bene gesserit in eodem. Dedimus insuper et concessimus ac per presentes pro nobis heredibus et successoribus nostris damus et concedimus prefato Edwardo Writington pro labore et impensis suis in predictis rebus et actis ut prefertur excipiendis et perscribendis quandam annuitatem siue annuale feodum centum librarum bone et legalis monete Anglie per annum Habendum gaudendum percipiendum et recipiendum predictam annuitatem siue annuale feodum centum librarum eidem Edwardo Writington uel assignatis suis a festo sancti Michaelis Archangeli ultimo preterito ante datam presencium ad duos terminos anni usuales uidelicet ad festum Annunciacionis beate Marie uirginis et sancti Michaelis Archangeli perequales porciones ad Receptam Scaccarii nostri Westmonasterii per manus thesaurarii subthesaurarii et camerariorum scaccarii nostri predicti pro tempore existencium singulis annis soluendas quamdiu se bene gesserit in officio predicto. Et ut prefatus Edwardus Writington melius officium suum in ea parte exequi ualeat et possit uolumus et per presentes ordinamus quod prefatus Edwardus Writington locum et sedem in curiis nostris predictis magis idoneum et conuenientem ad res et acta predicta excipienda et perscribenda per appunctuacionem cancellarii nostri siue custodis magni sigilli nostri iusticiariorum et baronum nostrorum et aliorum iudicum supremorum et primariorum in curiis nostris respectiue habeat et possideat. Quare mandamus et precipimus tam predictis cancellario et custodi magni sigilli nostri iusticiariis et baronibus quam aliis iudicibus supremis et primariis quod in curiis nostris predictis respectiue

sedem et locum ad eadem res et acta excipienda et perscribenda conuenientem eidem Edwardo Writington appunctuent et perscribant. Et quod eidem Edwardo Writington sint fauorabiliter annuentes in premissis quociens res sic postulauerit sicuti qui seruicium prestat honorem et conseruacionem legum regni nostri tantopere concernens et regali constitucioni nostre fundatum. Volumus insuper et firmiter per presentes iniungendo precipimus et mandamus omnibus et singulis officiariis et ministris earundem curiarum nostrarum respectiue quod prefato Edwardo Writington sint intendentes et auxiliantes secundum intencionem nostram regiam in ea parte. Eo quod expressa mencio etc. In cuius rei etc. Teste rege apud Westmonasterium uicesimo quinto die Octobris.

Those granted to Hetley are in the same form. No record of any subsequent appointments of official reporters has yet been found. Half-yearly instalments of the salaries granted by the letters patent were paid as late as Michaelmas term, 17 James I., and are recorded on the Issue Rolls of that year.

Iacobo Hedley reiatori legum de feodo suo ad centum libras per annum ei debitas pro dimidio anni finito ad festum predictum . . . l libras.

Edwardo Writington armigero reiatori legum domini regis de feodo suo ad centum libras per annum ei debitas pro dimidio anni finito ad festum sancti Michaelis archangeli anno regni regis Iacobi septimo decimo . . . l libras.¹

The insertion of these detailed particulars in a brief introduction is justified on the ground that they form an important part of the history of law reporting. Anything which can be learnt about the reporters of the Tudor and early Stuart period may be relevant to the history of the Year Books as a continuous series ; and perhaps by such investigations as these some light may be thrown upon the infancy of our reports. My immediate purpose, however, has been to show that King James I. actually appointed official reporters, who reported and were paid for reporting, but whose work has not been preserved either in original or transcript by any officer of the courts. What is true of the reporters of the reign of James may be true of an earlier period, and the non-existence of official copies of the Year Books cannot of itself be taken as evidence that no official reporters were appointed in the fourteenth and fifteenth centuries. On the other hand no positive evidence has yet been produced in support of Plowden's much discussed statement. From this, based though it doubtless is upon tradition, we cannot deduce that throughout the Middle Ages there were four reporters working in concert and paid by the king. But the tradition is not likely to be wholly wrong. Even if we admit that the earliest Year Books were mere

¹ Issue Rolls, Pells, No. 566, rolls 19 and 20.

students' notebooks and entirely unofficial in character we need not assume that an organised system of law reporting never prevailed in the Middle Ages ; nor need we deny that there may have been a time when the reporters were paid by the kings of this realm as Plowden declared and others have believed. Almost certainly the conditions under which the Year Books were produced varied from time to time.

This is no place for a discussion of the character of the reports in the later Year Books. It is sufficient to remark that independent reports of the same case are not a prominent feature of the manuscripts in which they are preserved. In this respect they differ considerably from the Year Books of Edward II., the various manuscripts of which often appear to disclose three or more independent reports of a single case. This difference, if it be established, seems to indicate an improving organisation in the production of the reports. There are few more hopeful sources for the history, and especially the early history, of our Year Books than carefully compiled particulars of the relation of various contemporary manuscripts to one another. As regards the early years of the reign of Edward II. this subject is discussed in a subsequent section of this Introduction.

Two theories of the authorship of the Year Books remain to be noticed. First, the modern editions of Sir Edward Coke's *Reports* contain a marginal note opposite his well-known remark about the four reporters in these words :

These four reporters I take to be those who have since been nam'd Readers, and elected to that Office by the respective Inns of Court.

They appear for the first time in the anonymous edition of 1738, and are repeated in George Wilson's edition of 1777.¹ Though put forward as a mere conjecture in explanation of Coke's statement, they should not be treated as absurd. Quite recently and in this very series Maitland propounded the theory that the early Year Books had as their object instruction for pleaders rather than the authoritative fixation of points of substantive law.² His theory, supported as it is by a wealth of argument, has met with general approval. It is also in accordance with what Sir John Fortescue stated in his *De laudibus legum Angliae*,³ written in the middle of the fifteenth century.

Reportantur etiam ea quae in curiis regiis placitantur disputantur et iudicantur ac in libros ad futurorum eruditionem rediguntur in sermone semper gallico.

¹ The edition of 1738 differs considerably from that of Edward Chilton, published in 1697. Several of the editions of the Reports are not to be found

in the Library of the British Museum.

² See p. ix above.

³ c. 48 and p. 111 v° in the edition of the year 1616.

Fortescue obviously refers to the Year Books in this passage, and the context shows that by *futurorum* he means students. If, however, the Year Books were compiled for the instruction of students it is highly probable that they were used in the ordinary course of legal studies in the Inns of Court. In the Tudor period these studies were conducted under the supervision of Readers of whom two were appointed in each Inn annually. Actual evidence of the Readers using the Year Books is wanting. We know next to nothing of their work in the fifteenth century¹; but in the sixteenth century their readings seem to have become something of a formality; their topics were then either Statutes or some special branch of law. But law reporting was at a low ebb in that century; and in earlier days when the Year Books flourished, the readers may have taken their office more seriously, and have given definite instruction in pleading. In the Inns of Chancery they studied original writs; in the Inns of Court may they not have studied such works as *Nouae Narrationes* and the Year Books? It is significant that two of our Year Books of Edward II. are preceded in their manuscripts by the *Nouae Narrationes*, an obvious work of instruction. Is it impossible that a Lent reader was at one time responsible for the production, either personally or by deputy, of reports for Michaelmas and Hilary terms? and may not an autumn reader have had a like responsibility for Easter and Trinity terms? If in course of time the readers or their deputies became negligent in making their reports, the judges or perhaps even the king might have resolved to appoint four paid reporters, who would be likely to perform their work more efficiently and would so preserve an established institution.² The marginal conjecture of the anonymous editor of Coke's reports certainly deserves our gratitude for it is at least highly suggestive.

Let us now turn to another theory. Mr. Luke Owen Pike, the veteran editor of the Year Books of Edward III., has recently expressed the opinion that they may have been the unofficial work of four of the more important clerks of the Common Bench.³ His great erudition and long experience in this field of research very properly attracts much attention to his opinion. It is certainly a fact that two of the prothonotaries of the Common Bench, namely Richard Brownlow and John Goldesborough, produced a meritorious volume of reports in the middle of the seventeenth century;

¹ The Black Books of Lincoln's Inn give no particulars of the readings during this century. We may notice, however, what Coke says about the citation of Year Books in the Inner Temple in the Prologue to Part X of his reports. See p. xiv above.

² If not responsible for the original report, the reader may have been expected to collect and arrange the reports for the use of the students.

³ Luke Owen Pike, Year Books of 20 Edw. III. part 2 (No. 31 in Rolls Series), vol. ii. p. lxxii.

and there is no reason for doubting the capacity of their predecessors in the fourteenth and fifteenth centuries to do likewise. Moreover, when it is objected that the clerks of the Middle Ages were interested in matters of enrolment rather than of pure law, it must in fairness to Mr. Pike's theory be remembered that in their eyes a large part of the arguments in court related to enrolment and nothing else. Indeed, a large number of cases in the early Year Books are just of the sort which would especially interest the prothonotaries and their subordinates. It is, therefore, far from improbable that the clerks responsible for the enrolment of the cases took notes of the arguments in court, and if so these notes may have been written in French. Nevertheless, if the Year Books had been written by clerks we should expect that questions of enrolment would have been treated in greater detail and in a more technical spirit. Now, the Year Books, taken as a whole, have not the appearance of reports compiled for the instruction and guidance of enrolling clerks, though in some cases they may have been partly based upon their notes. It is also scarcely credible that they whose interests lay in enrolment and procedure would have been selected to make reports as part of their duty for the instruction of students and barristers or for the convenience of the judges and serjeants. It is true that now and then a clerk might compile a volume of reports which would pass as the work of a barrister; but it is scarcely conceivable that a long series of Year Books can have been the work of the enrolling clerks without their disclosing some evidence of the occupation of their authors. We may test this matter by referring to the reports of Brownlow and Goldesborough which were published in 1651, when both men were dead. The title of the book is as follows:

Reports of diverse choice cases in law taken by those late and most judicious prothonotaries of the common pleas Richard Brownlow¹ and John Goldesborough esquires with directions how to proceed in many intricate actions both reall and personall shewing the nature of those actions and the practice in them; excellently usefull for the avoyding of many errorrs heretofore committed in the like proceedings; fit for all lawyers, attorneys and practisers of the law

Its contents, as the title suggests, differ in form from those of an ordinary volume of reports. The cases are arranged according to their subject-matter instead of chronologically. The numbers of the rolls on which the cases are recorded respectively are nearly always supplied,² and the reports themselves seem to be primarily based upon the records

¹ Brownlow was appointed chief Prothonotary of the Common Bench on 9 October 1589, and Goldesborough second Prothonotary of the same court

on 7 May 1613. (See their reports, p. 256.)

² This, however, was not a peculiarity of their reports.

and not upon the speeches of counsel and the judgments of the court. Goldesborough is also the reputed author of a series of reports (published in 1653) extending from April 1586 to February 1601, during which period he was not a prothonotary. Though printed from a manuscript in his own hand the earliest cases in the volume can scarcely have been reported by Goldesborough himself, as he was not born before 1568. It should be noticed, too, that the volume only purports to contain cases which he had 'collected.' Similarly a volume of reports attributed to Brownlow and extending from 7 to 11 James I., which resemble other reports in form and subject-matter, purport only to have been 'collected' by him. Several reports in this volume are of cases in the King's Bench, and it is improbable in any event that they were the work of a presumably busy official of the Common Bench. Thus, the only reports undoubtedly compiled by the prothonotaries in the sixteenth century were those for which Brownlow and Goldesborough were jointly responsible, and it is significant that they differ in form and character from those of other reporters.

Again, we may doubt whether Plowden would have referred to the clerks of the courts, who were permanent officials, as 'chosen men,' or that Sir Edward Coke, when a member of the bar, would have called them 'discreet and learned professors of the law'; for in the seventeenth century the words 'professors of the law' seem to have been applied normally to members of the bar. If the tradition of the days of Plowden and Coke had been that the ancient reporters were the prothonotaries or other of the more important clerks of the courts, these eminent jurists would almost certainly have described them by some official designation. Nor should it be forgotten that the suggestion of the Year Books having been compiled by the prothonotaries was first made by Sir William Blackstone¹ in the year 1765, nearly two centuries after the death of Plowden. Finally, the official system of reporting which Bacon endeavoured to institute was professedly based upon tradition; but the reporters whom he appointed, Writington and Hetley, were barristers and not clerks or other officials of the courts.

Another suggestion which Mr. Pike has recently made needs brief notice. He has observed that in the edition of the Year Books published in 1678-9 there are two sets of reports of the year 21 Edw. III., and that one of them concludes with the words: 'Here endith Maister Horewoodes report.' He says that there can be little doubt that Maister Horewood was either a clerk of the reign of Edward III. or a prothonotary of the time at which the Year Book was printed. He believes that in either case we have a connecting link between the

¹ *Commentaries*, i. 71.

Year Books and the clerks or prothonotaries of the courts.¹ Mr. Pike has such a distinguished reputation as an editor and student of Year Books that it will be well to draw attention to a strange mistake which may, if not corrected, mislead others. The Maister Horewood, of whom he speaks, is a well-known man, frequently mentioned in the edition of the Year Books printed in 1678-9; as, for example, in the reports of 40 Edw. III. :

Solouque lenprent de Pinson le quel come jeo entende quant a cel case est melior que le report de Horeword [sic] et le prent de Bartlet.²

In this passage the first reference is to the edition of the Year Book of 21 Edw. III., printed by Pynson in 1520; the second is to the edition of 21 Edw. III., by Thomas Berthelet in 1527, which contained an entirely different report, afterwards called 'Master Horewood's report'; while the third reference seems to be intended to amplify the second. It is certain, however, that Master Horewode was not the compiler of the report which bears his name, but the owner; and that he lent his manuscript of it to Berthelet in order that it might be printed. In a note at the end of the report, which is not repeated in subsequent editions, Berthelet refers to the loan in these words :

Etsi ille vir Guilielmus Horewod in legibus nostratibus cum primis peritus. et acerrimo ingenio peditus. exemplar huius repertorii (sic vocant) ad exscribendum contulit. tamen ea conditione. vti ego non excuderem. nisi ille primum perlegerit atque castigaret. Verum vbi exscripsi. continue inceptum imo et ferme excusum est priusquam ille vir optimus sciuit. ego vt tu vides. fretus sua ingente humanitate tam audax sum. Quam ob rem haud fieri potest. quin errata mea incuria. cum in exscribendo tum in imprimendo. elapsa sint. De paucis quidam generosissimus. amicus meus me admonuit. de quibus etiam. ne diutius te remorentur cum ea legeres. sic admonere opere precium duxi.

This language shows that Horewood was a man of considerable distinction in the legal profession. There can be no doubt that he was the same person as William Whorewood who succeeded Richard Riche as solicitor-general on 13 April 1536, and John Baker as attorney-general on 8 November 1540.³ His name, though normally written Whorwod or Whorwode, was sometimes spelt without its initial letter. No objection can be taken to the identification, on the ground that, though not a clerk, he is described as 'Maister' in all editions of his report subsequent to Berthelet's, for this prefix was often applied to lawyers of eminence in the Tudor period.

¹ Year Books of 20 Ed. III. Second Part, p. lxxx.

² Mich. 40 Edw. III., fol. 45, case 29.

³ See *Selden Society Publications*, vol. 25, p. 227 note.

2. THE ABRIDGEMENTS.

Towards the close of the fifteenth century a new form of literary activity arose and lawyers began to compile abridgements of the Year Books and Statutes. It is true that there are many manuscripts of a much earlier period, such as our X, in which the reports or some of them are abridged. There are also manuscripts of an earlier period, such as our Z, in which the cases are arranged partly in an order professedly chronological and partly according to their subject-matter—that is to say, according to the writs by which the cases originated. Nevertheless, it is not until the middle of the fifteenth century that we meet with Abridgements in the sense in which lawyers have generally understood the word—that is to say, collections of abridged cases arranged according to their subject-matter in alphabetical order and without regard to chronology. A few of them were printed: *Statham's Abridgement*, *Fitzherbert's Abridgement*, and the *Abridgement of the Book of Assizes*. A few still exist in manuscript, but probably many have disappeared for ever. They were written at a time when paper, which is much less durable than parchment, had become a popular writing material.

The compilation of abridgements seems to have led to results which profoundly affected the history of the Year Books. In the first place the student could gain information on special points of law much more speedily from the carefully digested and well-arranged abridgements than from the unindexed Year Books, many of which were scarce. If he purchased an abridgement and had no ambition in legal literature the old manuscripts obviously became less useful to him. He would usually be satisfied with the brief statements of law which he found in the new compilations. The practitioner, too, was beginning to look upon the Year Books as works of authority rather than of instruction; for it was just in this second half of the fifteenth century that reports are first cited in court with any frequency. The new Abridgements, even while still in manuscript, directed men to old and neglected volumes of reports containing many cases of great legal interest. Hence when the printing press found its way into England the Year Books and the Abridgements were among its early productions. In the first decade of law printing, namely 1480–1490, six Year Books were published—that is to say, 33–37 Henry VI. and 20 Henry VI. Then Statham's Abridgement appeared about 1490, written many years earlier¹ and compiled entirely from manuscripts. During the next thirty years, 1490–1520, Pynson and others published a large number of Year Books of various reigns, including the first eight years of Henry VII. and also the years

¹ Statham died in 1472. See p. xxxiii below.

9 Henry VII., 12 Henry VII., and 14 Henry VIII., which appear to have been printed almost contemporaneously.¹ The Year Books of Henry V. and various odd years in the reigns of Edward III., Henry IV., Henry VI., and Edward IV. were published later in the sixteenth century; those of Edward II. were first printed in 1678, and those of Richard II. still remain unprinted. It was in 1516,² towards the close of the period when Pynson flourished, that Fitzherbert published his *Grand Abridgement*. This noble work in three parts, containing 792 folios in all, far exceeded in magnitude any law book hitherto printed in England. A year later John Rastell compiled and printed a Table to this work,³ a convincing proof of its utility. For a century and a half these two abridgements contained all that the student of printed books could learn about the Year Books of Edward II.

Some time before 21 December 1516, the '*Liber Assisarum et Placitorum Corone*,' a volume of reports of the reign of Edward III., issued from the press of John Rastell.⁴ It consisted chiefly of reports of assizes of novel disseisin and mort d'ancestor and various pleas of the crown heard before justices of assize in the country; but it also contained a considerable number of cases in trespass and error heard in the King's Bench, and a few cases in chancery originated by bill. This book may therefore be regarded as supplementary to the ordinary series of the Year Books, which in the fourteenth century are chiefly concerned with cases in the Common Bench. It was evidently compiled at a time when law reporters were especially active, and a careful study of its contents and the manuscripts from which it is derived will probably disclose some interesting information about their work and methods.

A few years earlier, probably in 1509 or 1510, Pynson published a book with no title-page which in subsequent editions was called '*The Abridgement of the Book of Assizes*.' This little volume, to which modern bibliographers have given the title '*Liber Assisarum*,'⁵

¹ These particulars are taken from the very useful article by Mr. Soule on the *Bibliography of the Year Books* printed in the *Harvard Law Review* (xiv. No. 8).

² At the end of the third volume the following words occur 'Finis tocus istius operis finiti xxi die Dicembris anno domini millesimo quingentesimo sexto decimo.'

³ On 10 February 1518 (or according to the ancient computation, 1517) John Rastell published a Table to the *Grand Abridgement* at the end of which occur these words: 'Tabula libri magni abbreviamenti librorum legum anglorum

finita feliciter impressa Londoni impensis Iohannis Rastell anno Domini mccccxvii die x Februarii.'

⁴ He refers in his Prologue to the *Grand Abridgement* as a book not yet printed. On the other hand he gives the names of the justices of assize in the fifth year of Henry VIII., so that it was published at the earliest in the course of the regnal year beginning 22 April 1513.

⁵ The Table of Contents is headed 'Tabula libri assisarum.' The British Museum copy is bound together with *Le Breggement de touz les estatutz*, which Pynson printed in 1528.

seems to have been printed from an ancient manuscript. It was in no sense an abridgement of John Rastell's *Liber Assisarum*, which has just been described and it was, as already stated, the older of the two books. Rastell's '*Liber Assisarum*' reports cases of one reign only, namely that of Edward III., whereas Pynson's book contains abridgements not only of cases heard in the reign of Edward III. but also of others heard in the four following reigns. Pynson's book was obviously a work of less general utility than Statham's Abridgement, which contains a larger number of headings and treats of many technical matters of law in greater detail. Pynson's edition of the Abridgement of the Book of Assizes is extremely scarce, and few copies of it are to be found in our great public libraries; but two editions of it were printed in 1555 by Richard Tottel.

If we were to collect the cases of a certain period occurring in any one abridgement, whether printed or unprinted, we might perhaps ascertain which of our existing manuscripts, if any, were used in its compilation. We might even gather a few particulars about manuscripts of the Year Books which have long since been lost or destroyed. Possibly too the particular abridgement would contain no notes of cases of certain years, and if this feature were noticed in other abridgements we might infer that manuscript reports of those years were already scarce in the days when the abridgements were being compiled. Any thorough investigation of such matters would necessarily be slow and might after all yield little fruit. Nevertheless an editor of a Year Book can at least identify and arrange in chronological order such notes in the abridgements as relate to the cases with which he is concerned. These may enable a future editor of the abridgements themselves to arrive at some useful conclusions about their construction. We may now briefly consider the three earliest Abridgements of the Year Books.

Statham's Abridgement has been generally assigned to a certain Nicholas Statham, a member of Lincoln's Inn who became Lent reader of that Society in 1471 and died in the following year.¹ His book, probably printed at Rouen about eighteen years after his death by Guillaume le Tailleur for Richard Pynson of London, though quite possibly printed in London by Pynson himself,² is remarkable as being, apart from a few Year Books, our earliest printed law book. Though generally described in catalogues as an 'Abridgement of Cases to the end of K. Henry VI.,' it has in fact no title-page, and its authorship can only

¹ Black Books of Lincoln's Inn, i. 53.

² On the reverse of the second folio are the words 'per me R pynson.'

be deduced from the fact that it was consistently described as 'Statham by writers and reporters of the sixteenth century. Its pages and abridged cases are alike unnumbered ; but as the first four pages of each quire of eight are marked *a* 1, *a* 2, *a* 3, *a* 4 . . . *b* 1, *b* 2 . . . and so on, respectively, it is easy to give a precise reference to the pages. An editor of the Year Books of Edward II. should not be expected to give a detailed description of this important work. It may be observed, however that it contains a few notes of cases of the reign of Edward I., and that from 1 Edward II. to 38 Henry VI. nearly every year is represented in the volume. The chief omissions seem to be 2 Edward II., 37 Edward III., 14-19 Richard II., 10 Henry V., and 10, 17, 33, 34 and 37 Henry VI. ; though further research may reveal a few cases of some of these years. Its earliest entries are very brief notes ; but among the later ones are divers long reports, some of which are not to be found in the printed Year Books.¹ Though the entries are usually dated by the term and regnal year, many have a reference to a year and none to a term. From this, however, it should not be inferred that Statham had before him manuscripts in which the reports of certain years were not divided into terms, for he sometimes mentions and sometimes omits the term in his notes of cases of the same year. As the volume is unfortunately disfigured by many misprints, the term may in some instances have been omitted through carelessness. On the other hand the terms of certain years, as for example 4 Henry V., are so consistently omitted in every part of the volume that Statham's manuscript reports of those years can scarcely have been divided into terms in the usual manner. Significantly enough, this year 4 Henry V. is one for which our printed Year Books contain no reports ; and possibly Statham's Abridgement is here based upon some scarce manuscript containing but few reports of that year. This may also be true of several other years. The whole subject of citation by years and terms would probably repay in interest a careful investigation.

Statham abridged one case at least from the reports of the Cornish eyre of Edward I., and several from the Northamptonshire and Nottingham eyres of 8 Edward III. ; but as he gives no references to the Kentish eyre of 6 Edward II. it is probable that he was not in possession of a manuscript containing reports of that eyre. His Abridgement comprises the following notes of cases heard in the first five years of the reign of Edward II.

1. *Quale ius.* (Mich. 1 Edw. II.) *Quale ius issera sur accion de covenant*

¹ For instance, *Barre*, M. 30 H. vj., c. 4 v° ; *Remitter*, H. 19 H. vj., v. 7 v°.

porté par home de religioun pur lever une fyne, etc. Tamen il semble qe le seigneur peut entrer, qar ceo n'est qe feoffement, etc. (t, 4v^o.)

2. *Age*. (Anno primo Edw. II.) En breue d'annuité vers un persone d'un esglise, qe pria en aide del heire del patron deinz age et qe le parole demurge. Et non potuit, etc. (a, 5v^o.)

3. *Age*. (Mich. 3 Edw. II.) En waste verz tenaunt pro indiuiso de wast fait par son parcener¹ il fuist ousté de son age. Vide statutum. (a, 5v^o.)

4. *Saver de defaute*. (Mich. 3 Edw. II.) Quere si le demandant peut releaser le defaute le vouché al le graund cape ou petit cape, et si noun si le tenant peut, etc. (x, 7r^o.)

5. *Viewe*. (Mich. 3 Edw. II.) En breue d'entrusion verz le baron et sa feme supposant qe le defendant intruda; le viewe fuist graunté. Quere causam; quar nulle tort est en le baroun, etc. (et², 3v^o.)

6. *Droit*. (Easter, 3 Edw. II.) Lou home graunt a moy lez servicez son tenant par fyne sur consaunce de droit, jeo avera breue de custumez et servicez, non obstante qe le tenant n'attourna, etc. Mez jeo ne puis avower, etc. Tamen il semble fort de maintenir son breue de custumez et servicez, quar il covient de lier possessioun en luy ou en son auncestre. Et en ceo cas n'est possessioun en fait come semble, etc. en replevin per opinionem curie, etc. (i, 6v^o.)

7. *Waste*. (Easter, 3 Edw. II.) Waste agardé boun verz executours sanz coexecutourz nient nosmé etc. (z, 4r^o.)

8. *Voucher* d'un meason admitté lou une tofte fuit garranté, etc., en un nota. (et, 2v^o.)

9. *Nuper obiit*. (Anno III. Edw. I.) Nuper obiit gist parentre soers de demi sank, etc., del seisin de comune auncestre, etc. (r, iv^o.)

10. *Oyer et terminer*. (Trinity, 4 or 5 Edw. II.) En oyer et terminer si la partie al primer jour face defaute home avera uenire facias ou pone per uadium a son eleccioun. (r, 4.)

11. *Fynes*. (Mich. 5 Edw. II.) Un fyne ceo leva sur breue d'entré, mes primes le demaundaunt counta et le tenant fist defence et sur ceo prirent congé d'accorder et sur ceo lever le fyn, etc. Et ex hoc sequitur qe fyne peut estre levé sur chescun breue par quel terre est demandé, ou sur autre breue qe chargera terre, come breue de garrant de chartre ou quid iuris clamat ou per que seruicia et tielx semblablez com semble, etc. (m, 8v^o.)

Statham's will, dated 15 July 1472, and proved on August 5 following, contains an interesting bequest of law books.³

I will that William my clerk haue my litill olde statutes couered with ledir, and my natura breuium, and if he go to court to thentente to continue there I wil that he haue my best Registre and my boke of newe statutez.

It will be noticed that, though he is supposed to have been the sole

¹ This word is printed in the book as *pere*, the letters here printed in italics representing a mark of contraction.

² In early printed books the abbreviations for the word *et* and for the

syllables *con* and *rum* were used as signatures when all the letters of the alphabet had been exhausted.

³ The reference to this will is 7 *Wattys*.

author of an important abridgement, he makes no special bequest of its manuscript, nor of any of the Year Books on which it is based.

So far as this Introduction is concerned our chief interest in the Abridgement of the Book of Assizes (the second of our early printed abridgements) lies in a possible reference to it in the will of Sir William Callow, one of the judges of the Common Bench in the reign of Henry VII. Sir William, whom the Middle Temple claims as one of her distinguished members, made his will in 1485 on 5 October, and the same was duly proved in the Prerogative Court of Canterbury on 4 February 1487.¹ It contains the following bequest :

And as for my plate and stuf at Cauntbury and bookes and other loosendis and goods of myn being in my study at London and elsewhere except a book of Assises in papir a Dratton ² a booke of newe statutes and ii bookes of Brigementes oon of myne owen labour and thothir of Lincolnesin labour be atte the disposicion of myne executours my clerkes and other my frendes suche as entende to encrease theimsilf in the lawe.

Of these two abridgements 'oon of myne owen labour' and 'thothir of Lincolnesin labour,' we may suspect that the latter was the work attributed to Nicholas Statham, who was, as already stated, Lent reader of Lincoln's Inn in 1471.³ Now the description of the book, not by the name of a single compiler, but by the remarkable words 'of Lincolnesin labour,' certainly suggests that it was produced not by some one man but by several men working together. If then we are to identify it with Statham's Abridgement we must suppose that it was produced not by Statham himself but under his supervision. Remembering that he was Lent reader of the Society of Lincoln's Inn, we may at least consider the possibility of this Abridgement having been compiled by members of Lincoln's Inn under Statham's direction during the period when as reader he was responsible for the legal studies of that Society. This is, of course, a mere possibility, which may be altogether ill founded. Callow's will, however, shows that an Abridgement of some sort was undoubtedly produced by 'Lincoln's Inn labour,' and though there may be much difference of opinion about the meaning of those words, they can scarcely fail to suggest that the Year Books also may have been compiled by the labour of the Inns of Court.

The other abridgement which Callow mentions in his will and describes as 'of myne owen labour' may perhaps be identified with the 'Abridgement of the Book of Assizes.' It enjoyed a good reputation in the Tudor and early Stuart period. Sir Edward Coke speaks ⁴ of

¹ The reference to this will is 7 *Milles*.

² An error for Bratton or Bracton.

³ See p. xxxi above.

⁴ *Reports*, Part X. fol. xxviii.

Stathoms abridgement first published in the reign of H. 6 by Stathom a learned lawyer of that time ; and the Abridgement of the Book of the Assizes published also about the same time, but the author thereof is unknown.

This identification is in some measure confirmed by the fact that Calow's will shows that he possessed a copy of the Book of Assizes.

A consideration of Fitzherbert's Abridgement in its relation to the Year Books of Edward II. must be reserved for another volume. It may be noticed, however, that for purposes of reference he gives the pages of Rastell's printed 'Book of Assizes,' but he is content to cite cases in the manuscript Year Books by the regnal year and term, and sometimes like Statham by the regnal year alone. In many instances his references are incorrect. Thus he cites the case of *Shrewsbury v. Shrewsbury*, printed on subsequent pages, as of Michaelmas, whereas it was reported and enrolled in Hilary term 4 Edward II.¹ This, if not due to carelessness, might be explained by the fact that in one manuscript the Michaelmas cases of that year are not separated from those of the following term. If then Fitzherbert used this manuscript in making his Abridgement he would naturally cite the Hilary cases as of the preceding term. It is certain, however, that, whether he used this manuscript or not, he used at least one other ; for he cites several cases as of Hilary term of 4 Edward II., quite correctly.

Probably many other Abridgements besides those already described were compiled in the Tudor period. There is, for instance, an interesting but unfortunately very imperfect abridgement in manuscript at the British Museum,² which has never been printed. It seems to have been written in the reign of Henry VIII., for it contains a case of the third year of that reign and several cases of the reign of Henry VII. ; but some, if not all, of these may have been written later than the main body of the work. In its present form it consists of 83 paper folios neatly written on both sides. Internal evidence, however, shows that it was once a fine volume of more than 650 folios.³ All that remains of it now is in a good state of preservation, one folio only, namely that which should follow No. 65, being missing. This abridgement contains no notes of cases heard in either the Common Bench or the King's Bench in the reigns of Edward I. and Edward II. On the other hand, it has a few notes which relate to the eyres in Kent, London and Nottingham in the reigns of Edward II. and Edward III. These, however, seem to be

¹ See p. 93 below. All the manuscripts agree in ascribing this case to Hilary term.

² Add. MSS. No. 35936.

³ On folio 4 r^o there is a note, 'vide plus de cest title de couerture en le title de T. a volunté posterius fol. DCL., M., iii. H. viii.'

among the later insertions. It also contains notes from cases in the Book of Assizes, and a few from the unprinted Year Books of Richard II. The chief peculiarity of this abridgement is that it gives precise references to the folios of the manuscripts upon which it is based. As yet, however, I have not been able to identify the manuscripts. The total absence in this Abridgement of notes of cases argued in the Common Bench in the reign of Edward II., and the scarcity of them in Statham's Abridgement, suggests strongly that the Year Books of Edward II. were little used in early Tudor days; and were probably uncommon. Interest in them may have been revived by the publication of Fitzherbert's Abridgement, which contains numerous notes of cases reported in this reign.

3. THE MANUSCRIPTS AND THEIR OWNERS.

If we could ascertain by what sort of persons the earliest Year Books were owned and in what quantity they were produced, we should possess information almost enough of itself to show the purpose for which they were compiled. But this is just what we cannot ascertain except in a very conjectural fashion. The earliest owners whose names we know lived for the most part late in the fifteenth century, and the chief basis for our vague estimates of the number of Year Books of Edward II. of the same class as those which we now possess is a comparison of the number of the surviving volumes with those of other legal treatises of the same period. Perhaps when the later Year Books have been studied in manuscript we may gradually form clearer ideas on the subject. For the present we must content ourselves with investigating the material which lies at hand. Though small in quantity, it is instructive. Our Year Books were, with the exception of *Y*¹ which is unique, all written in the course of the reign of Edward III. or soon after his death. With the same exception not one of them contains any cases of the time of Edward I. set out in regular series, though in some of them a few cases which may be ascribed to that reign are inserted without regard to chronological order among those of Edward II. Again *L*, *S* and *Z* are the only manuscript Year Books of Edward II. which also contain cases of the reign of Edward III., and these cases are of the early years of the latter reign. Thus the Year Books of Edward II., as we know them, are volumes relating to that reign exclusively or to that reign and a few years more. We can scarcely be wrong in saying that in the latter part of the fourteenth century—that

¹ This manuscript was probably written in the reign of Edward II.

is to say, a few generations after the death of Edward II.—Year Books of this reign were circulating in single volumes containing reports of as many consecutive years as their compilers could obtain.

It should also be noticed that no manuscripts of the Year Books of Edward II. which were actually transcribed after the accession of Henry IV. still exist. All those which we know seem to date from the fourteenth century. Apparently an active demand for them ceased some three or four generations after they were compiled. We may infer from this that they were already regarded as out of date for purposes of instruction and as yet not much appreciated as works of authority. Even in early Tudor days, when men began to cite reported cases in court, and the abridgements were being compiled and studied, there was no great demand for the Year Books of Edward II. They remained unprinted until the middle of the reign of Charles II., and such interest as was taken in them during the Tudor period was insufficient, so far as is known, to give rise to the production of new copies of them even in manuscript.

In the preparation of the first five volumes of this series fourteen manuscripts in all have been used. Possibly a few more may yet come to light, but we cannot hope for many. The commercial value of ancient manuscripts has increased of late years, and owners, prouder of their possessions than formerly, seldom resent inspection. Now fourteen texts are quite enough to embarrass an editor, but the number is not large. It is very much smaller than twenty-six, the number of manuscripts used by the late Mr. F. M. Nicholls in his edition of Britton published in 1875; still more so than the number of manuscripts of that work now known to exist. Britton was no doubt a popular work in the days of the first three Edwards, but nevertheless it is improbable that any considerable number of serjeants, barristers and students possessed copies of it at that period. As the Year Books, in the form in which we now know them, are scarcer than manuscripts of Britton, we may at least suspect that they were less popular with the legal profession in the fourteenth century. There is certainly no good reason for thinking that many of the early Year Books in the form with which we are now familiar have been worn out by a long succession of readers and cast aside as useless. If this were the case we should surely find that some of those which still exist had been damaged but not entirely worn out by use. On the contrary, we find that they are for the most part in a good state of preservation. We may attribute the bad condition of two or three of them to the carelessness of custodians rather than to the zeal of students. There is scarcely one among them which records

the comments or corrections of a critical reader.¹ Such marginalia as we may find are the work of men writing in the fifteenth and sixteenth centuries. The earliest owners of our Year Books evidently treated them with care and respect and modestly refrained from disfiguring them by their own annotation.

Now this scarcity of Year Books and their good state of preservation suggests an explanation of certain difficulties in their history, which other considerations seem to render satisfactory. It is as follows. The reports with which lawyers of the reign of Edward II. were familiar were not finely written volumes such as those which we now know, but small pamphlets or gatherings of folios, each of which usually contained the reports of a single term. Perhaps those of several terms may sometimes have been sewn together or even copied continuously into a single small volume, especially where they were the work of an individual reporter of good reputation. But such collections of consecutive reports would have been considerably smaller than our large volumes of reports of the whole reign. The reason why none of these pamphlets or collections has survived to this day is that they were compiled for the instruction and immediate use of students. They read them, discussed them, and then as likely as not cast them aside in favour of more recent reports. On the other hand the larger volumes which have survived were not compiled for the instruction of students, but for the edification of mature lawyers who read law for recreation and collected legal treatises. The objection may be taken that treatises such as Britton and Bracton may also quite properly be described as works of instruction; and so strictly speaking might the large volumes of Year Books even if they were, as here suggested, compiled for the recreation of elderly lawyers. But in actual fact there is a great difference between the small collections of recent reports which young students might be expected to read as part of their legal education, and the long collections of reports and records of ancient cases which constitute the Year Books of Edward II. as we now know them. The difference is analogous to that between the texts of single books of Virgil and Homer which a modern schoolboy often possesses, and the large and expensive editions of classical authors used by men of erudition.

There can be no doubt that law students in the Middle Ages were accustomed to attend the courts. Fortescue says:

Wherefore every daye in courte the studentes in those lawes resorte by

¹ In the manuscript *P* there is some contemporary annotation.

greate numbers unto those courtes wherein the same lawes are redde and taught as it were in common scholes.¹

We know that in the reign of Edward II. the apprentices had a 'crib' in the Common Bench, which seems to have been a place to which they resorted for their self-instruction.² We also know that direct instruction by readers in the Inns of Court took place not during the term time, but in the vacations when they were not engaged in the work of their profession and when the students were no longer engaged in watching and noting legal proceedings. Even in Tudor times a member of an Inn of Court who had not yet been called to the Bar might take notes and actually call himself a reporter. William Burton, the Leicestershire antiquary, referring to the case of *Corbet v. Corbet* heard in Easter term, 1600, says :

I was then standing by, being a Reporter in the same Court.³

Yet Burton was only admitted a member of the Inner Temple on 20 May 1593, and was not called to the Bar until 19 May 1603.

But if in the Middle Ages young students busied themselves with taking notes, we need not assume that they were themselves normally responsible for the early reports. The Year Books are, as we may prove by checking them with the records, too carefully compiled to have been the work of mere beginners. The compilers of them assume that their readers are acquainted with the nature of original writs, the elements of procedure and the general principles of pleading. They were almost certainly written for purposes of instruction ; but they were written by persons who were themselves capable of giving instruction. In the modern technical sense of the word some of these reporters may have been 'students,' that is to say, men who had not yet been called to the Bar ;⁴ but they had obviously passed through a course of legal training, and should not be confused with the younger and untrained men, some of whom may have stood or sat beside them in the 'crib' taking notes, but not compiling reports for the instruction of others.

It is only by a careful examination of the reports of several years

¹ *De Laudibus*, first edition, f. 112. The Latin text of this passage is as follows: 'quo in curiis illis ad quas omni die placitabili confluunt studentes in legibus illis, quasi in scolis publicis leges ille leguntur et docentur.'

² *Year Book Series*, vol. ii. p. xvi. and vol. iv. p. xli.

³ *Description of Leicestershire*, p. 271.

⁴ The words 'student-at-law' were

formerly not restricted to members of an Inn of Court who had not been called to the Bar. Sir Nicholas Bacon, who was called to the Bar at Gray's Inn in 1533, and became a Bencher in 1550, was described officially in a royal book of receipts and payments from 1 October 1548 to 30 September 1549 as 'studeant-at-the lawe' (*Camden Society Publications*, first series, vol. 84, p. 13).

that we shall be able to form any useful estimate of the number of professional reporters in the reign of Edward II. In the next section of this Introduction, such an examination will be begun, but it is necessarily long and must be continued elsewhere. The rest of this section is chiefly concerned with the owners of some of the manuscripts in the fifteenth and subsequent centuries. Unfortunately comparatively few owners have recorded their names in their books, for it was not a common practice before the Tudor period. Unfortunately, too, many flyleaves and covers which once contained signatures have disappeared for ever. Moreover some names can no longer be read because the ink has faded; others have been carefully erased by subsequent owners. Even when we have a plainly written signature we cannot always be sure of its date, for owners sometimes imitated other hands when writing their names. John Maynard, for instance, has left his signature in our manuscript *B* in a hand which as far as appearances go might have been that of his great-grandfather or some more remote ancestor. Signatures in large letters not unlike those of monumental brasses are far from uncommon, and are not easily dated.

The first of our manuscripts (here called *A*) is in the University Library at Cambridge. It bears the name of Henry of Motelow on folio 111 r° and again on folio 113 v°. Henry was appointed a Justice of the Common Bench on 4 July 1357, and is believed to have died four years later¹; so that the manuscript must have come into his possession not many years after it was written. We also have information of another of its early owners. On folio 149 r° we have the words, 'Basset est magister huius libri ut dicit Armiston,' and on folio 161 there is a direction which reads as follows:

✠ Verte ad quarterium tercium sequentem ubi hoc signum scribitur in medio quaternii.

The reference is to a continuation of an additional report from folio 161 to folio 188 v°. On the latter folio we find the sign ✠ and the name of Basset noted in the margin. The date of the handwriting is very doubtful, but it is not later than the reign of Richard II., and possibly it is as old as the early years of Edward III. The Latin words now under discussion also raise some difficulties. When we are told 'Basset est magister huius libri,' we may take it that a certain Basset was once owner of the book, though the use of the word 'magister' in this sense is remarkable. Again the words 'ut dicit Armiston' seem to be equi-

¹ No fines were levied before him after Easter 1361.

valent to 'teste Armiston,' a form of expression not uncommon in brief statements of ownership of flyleaves and margins of manuscripts.¹ If these surmises are correct, Basset and Armiston were contemporaries, and the absence of Christian names suggests that they either practised at the Bar or were clerks of the Common Bench. There was a certain Armiston who held the office of a filacer in the Common Bench between the years 7 Richard II. and 22 Henry VI.; but he appears to have had no colleague called Basset, nor is anything known of any serjeant or advocate so named at this period. In the reign of Edward III., however, a certain William Basset became Justice of the Common Bench and Justice of the King's Bench successively and probably died about 24 Edward III. Possibly Ralph Basset of Drayton, who was a Justice of the Peace in Staffordshire in the reign of Richard II.,² and perhaps a lawyer, may have been the person to whom Armiston referred.

This manuscript is in three parts. The first contains the Kentish Eyre of 5 Edward II. and occupies the first nineteen folios. The next part contains reports of the Common Bench of the first three years of the reign, and also of Michaelmas term and part of Hilary term of 4 Edward II.³ The reports of the latter term end abruptly towards the top of folio 65 v^o, which is the last of a quire. The third part contains reports from Michaelmas term 10 Edward II. to Michaelmas term 20 Edward II., which is the last of the reign. It is improbable that this manuscript ever contained reports from Easter term 4 Edward II. to Trinity term 10 Edward II.

The manuscript, here called *B*, formerly the property of Serjeant Maynard, is interesting as containing the signature of another early owner of a Year Book of Edward II., John Wyse of Salisbury. It occurs three times on one folio, and on another we have the words 'Hec indentura facta inter Iohannem Wyse de ciuitate Noue Saresberie draper ex una parte,' which were probably written for the purpose of testing a pen. He was the same person as John Wyse who was elected Mayor of Salisbury 1453, 1460, 1461 and 1470.⁴ His will was proved in 1478 and it may be presumed that he died not long before that date. Although we have no certain knowledge how such a technical work as a Year Book came into the hands of a country merchant we may at least suspect that it was once the property of Cardinal Morton. In the

¹ Cf. 'Teste Willelmo Fletwode,' finished and ends in the middle of a folio. see p. 1 below.

² *Calendar of Letters Patent*, 1385-9, p. 82, *et passim*.

³ The last case of Hilary term is un-

⁴ R. C. Hoare, *History of Modern Wiltshire*, vi. 696. *Calendar of Patent Rolls*, 1452-1461, pp. 164, 658. For his will see 33 *Wattys* at Somerset House.

Arundel collection at the British Museum there are four manuscripts which belonged to the Cardinal. One of them, a fine copy of the *Infortiatum*,¹ belonged to this John Wyse.² Now the Cardinal was a Canon of Salisbury from 8 November 1458 to 29 October 1476, and being a strong Lancastrian he was in exile from 1461 till 1470.³ It is therefore not improbable that he pledged or sold some of his books to Wyse before leaving England. If the Cardinal were really the owner of this manuscript, we have the fact that scarcely a hundred years after its compilation it had passed into the hands of a young man who had been brought up not in the Inns of Court but in the Benedictine abbey of Cerne, who had studied canon and civil law at Oxford, and who had acquired at an early age a considerable practice in the ecclesiastical courts.

The names of some sixteenth-century owners are also written in this manuscript, namely, Henry Grene, esquire, of Staple Inn, of whom nothing has been ascertained; and also John Ramsey and Thomas Colby of Gray's Inn, who were admitted members of that Society in 1539 and 1549 respectively. It subsequently came into the possession of one John Kempe, possibly a kinsman of Thomas Colby. How Serjeant Maynard acquired it remains unknown. It was printed by him in pursuance of an authorisation of Rainsford, C.J., dated 28 August 1676. A later owner was John Heptinstall, well known as the printer of several works by Henry Purcell, the musician. It eventually found its way into the Library of Sir Gregory Osborn Page-Turner at Battlesden, which was sold by order of the sheriff of Bedfordshire in November 1824.⁴ It was purchased by Sir Thomas Phillipp of Middlehill and placed in his collection in March 1827. Finally it was acquired by the British Museum for the sum of £30 on the sale of a part of his library in 1896. At the Battlesden sale it was so poorly esteemed that it was placed without any description of its contents with two other manuscripts in a single lot:

2713. Treatise of Game, a MS. on vellum, in English with illuminated capitals. Aesopi fabulæ MS. on vellum, and one other on vellum.

¹ This is *Arundel MS.* 454. The other three manuscripts which belonged to the Cardinal are Nos. 366, 435, and 461 in the same collection. On f. 278 v^o of No. 454 John Wyse has written: 'Non est in mundo diues qui dicit Habundo; et hoc dicit Iohannes Wyse qui est bonus.'

² It may be noticed that Nicholas Statham, whose Abridgement has been discussed on an earlier page, was mem-

ber of Parliament for Old Salisbury in 7 Edward IV. (*Official Return* of 1878, part i. p. 359). He may well have known John Wyse and used his Year Book.

³ See *Dictionary of National Biography*, and W. H. Rich Jones, *Fasts Ecclesiae Sarisberiensis*, ii. p. 382.

⁴ A copy of the sale catalogue of this library is in the Library of the British Museum.

The Additional MS. 37658, here described as *C*, was purchased by the British Museum at the Philipps sale in June 1908. It was unknown, or at any rate inaccessible, to our late Literary Director, and is now used for the first time in an edition of the Year Books. It contains 276 folios, and is written on vellum in a remarkably clear and unlaborious hand of the fourteenth century. Its shape, 16 inches high and 6 inches wide, would make it conspicuous in any collection of Year Books. Once it was even taller than it now is, for most of the catch-words at the feet of the folios and some of the headlines have been cut away by the binders. The first folio of the MS. is a flyleaf; the second contains a report of an undated assize of novel disseisin heard before Sir Henry Spigurnel and his unnamed fellow justices in Lincolnshire. The nineteen folios next following (3–21) contain the tract on pleading known as *Nouae Narrationes*¹ which enjoyed no little popularity as a work of instruction in the Middle Ages. Next we have a useful but incomplete table of the Reports in the volume, beginning on folio 22 r^o and ending with folio 38 v^o. The Reports occupy 234 of the remaining 236 folios, the last two of which are blank. They extend from Michaelmas term 1 Edward II. to Michaelmas term 15 Edward II., but there are no reports for Trinity term 12 Edward II., and Easter and Trinity terms of 14 Edward II. Easter and Trinity terms of 11 Edward II. are treated as a single term. On an average there are about twenty folios to a year, but there are many more reports for some years than for others. Thirty-three folios are needed for the fifth year, but four only for the ninth. The folios are numbered in ancient Arabic figures on each side like the pages of a modern book. Curiously enough the numeration is inaccurate, the numbers 115, 277 and 311 being omitted, and the numbers 178 and 218 repeated. This numeration begins on folio 39 r^o with the Reports and was doubtless made for purposes of reference in the Table of Cases.

The words 'Iste liber pertinet ad me Georgium Serrye' occur on the last folio of this MS. on which there is writing, and on the second of the two following blank folios are the words 'Iste liber constat Ricardo Clerke.' Nothing is known of Serrye, but an extract from certain proceedings in one of the courts of Common Law written on the flyleaf at the end of the volume shows that Richard Clerke was acting therein as attorney for an unnamed prior, who was the executor of the will of John Shillingford. Possibly this was the John Shillingford who was elected mayor of Exeter in 1444.

¹ It was first printed by Richard Pynson at the end of the fifteenth century. Another edition was published by Tottel in 1561.

This manuscript formerly belonged to George Robert Petre of Dunken Hall, Lancashire, who died on 30 March 1829.¹ Neither he nor any of his ancestors of the name of Petre are known to have collected manuscripts or to have been interested in English law. Yet there are three Year Books at the British Museum which the late Sir Thomas Phillipps acquired from Mr. Petre; and none of them contain the signatures, arms, or book-plates of any eighteenth-century collector. It is almost certain that they once belonged to Sir Thomas Walmisley, a justice of the Common Bench from 1589 to 1612. He was the owner of Dunken Hall, which passed by descent to Catherine Walmisley, who married Robert Petre the seventh baron and an ancestor of the late George Robert Petre.² Sir Thomas is known to have possessed one Year Book of Edward II., for in the report of Catesby's Case we read:

For authorities, a resolution of this court *tempore* E. 2 in the written Book of Cases in his time; in which book (which belongs to Walmesley Justice) appears a writ awarded out of this court. Rex venerabili W. eadem gracia Lincolniensi episcopo salutem. Cum magister milicie Templi in Anglia³. . . .

I have been unable to find this writ either in *C* or in *Y*, another manuscript which may have belonged to Sir Thomas Walmisley⁴; and it may be that it is quoted from a manuscript Year Book of which nothing is now known.

The remarkably fine MS. here called *D* was bequeathed to the Library of Lincoln's Inn by Charles Fairfax, a legal antiquary of distinction, who died in 1673. All that is known of its history is recorded in the manuscript itself.

This volume of Edward y^e second I had upon an Exchange with Sergeant Clarke (commonly writt in our Pention-Rolls John Clerke the Thirteenth) in or about Decimo Septimo Jacobi 1619. I accounted itt more y^e gift of a Friende then any Exchange of like vallew.

C. FAIRFAX.

Now given as my legacy to Lincolnis Inne Library as may appeare by a Clause of my will entered in the last Folio of a large booke of Iters 433 w^{ch} (together with this) I also bequeath as likewise some other Manuscripts of Law to that Noble Society.

¹ *Gentleman's Magazine*, vol. 99, p. 379. He was the eldest son of the Hon. George Petre who died 22 October 1797 (*Ibidem*, vol. 67, p. 901).

² The pedigree is given with some errors of date in Whitaker's *History of Whalley* (ii. 280).

³ *Reports*, part 6, f. 62 (vol. iii. of edition of 1826, p. 379).

⁴ The description of the MS. as a Book of Cases suggests that it was *Y* rather than *C*. Possibly the case occurred in one of the three missing folios of the former manuscript.

This Serjeant Clerke was admitted a member of Lincoln's Inn in April 1608, and was created a serjeant in 1648, but in the printed Black Books of the Inn he is not described as 'the thirteenth.' Charles Fairfax was a few years his junior, having been admitted on 27 October 1611. His will is dated December 1672, and he died in the same month in the following year.¹

We learn from the Black Books that in November 1672, a few weeks before the date of the will of Charles Fairfax, the question of printing the Year Book of Edward II., then 'remaining in the Library,' was under consideration. The entry reads as follows²:

8 November 1672. Ordered that Sir Nicolas Pedley, Mr. Day, Mr. Manby and Mr. Atkyns, or any two of them, be a Committee to attend the Lord Chiefe Justice of England in order to the printing of the manuscript of Edward the Second now remaineing in the Library; and to treate with the Booksellers in relacion to the printing of the said manuscript.

This must refer to the Lincoln's Inn manuscript here designated by the letter *Z*, for Fairfax's manuscript *D* was still in his possession. Nevertheless, when the Inn acquired his manuscript on his death in the following year, namely 1673, the Masters of the Bench made no similar order with respect to the acquisition. This is not remarkable; for the Chief Justice, whom the Committee attended in 1672, was Sir Mathew Hale; and it is probable that they attended him at his own request. He had recently referred to this very manuscript (*Z*) in terms of high praise,³ so that we are bound to suppose that he would have wished to see it printed unless some better text was forthcoming. Apparently, either he was not altogether satisfied with the manuscript which he had praised and preferred the Maynard manuscript or the Committee were unable to agree to its publication for reasons of their own. It was not until 28 August 1676, four months after the resignation of Hale, and three years after the death of Fairfax that Maynard's manuscript was brought before Hale's successor, Sir Richard Rainsford, and its publication approved. Probably Hale had never seen Fairfax's manuscript, for it has many merits, and some might think it the best

¹ Thomas Jones of Gray's Inn, Common Serjeant of London from 1614 to 1625 (see John Strype's edition of Stowe's *Survey*, 1720, ii. 162), wrote a brief table of contents on a paper fly-leaf at the beginning of this volume, and also many headings and marginal notes. On folio 60 r^o the signature of William Fairfax occurs. It is difficult to suppose that any person of that name

was ever the owner of the manuscript. Charles Fairfax's brother William died at the siege of Frankenthal in 1621. The appearance of this signature remains to be explained. It is scarcely consistent with the extracts printed on p. xlv above.

² *The Black Books of Lincoln's Inn*, iii. 85.

³ In the case of *Sacheverell v. Froggat*. See our *Year Book Series*, i. p. xxx.

from which the Year Book could have been printed. If he had been acquainted with it when he praised *Z* he would almost certainly have mentioned it and praised it also.

Charles Fairfax also possessed a second manuscript Year Book of Edward II. which, if it still exists, remains to be discovered. At the end of the reports of Trinity term 2 Edward II. he has written in the margin of *D* ¹:

Three other cases ² are here inserted in my other MS. *E*. 2;

and at the end of the volume ³ he has added ten folios from this second manuscript, giving for his reason:

These last tenne leaves I took out of another of my manuscripts to make this volume the more compleate.

This observation is a little misleading. His MS. *D* ends in the middle of a case of Trinity term 19 Edward II.; his additional ten folios contain cases of the same year, the first of them beginning with a case of Michaelmas term, and the last ending with one of Trinity term. Thus, his additional folios, instead of supplying missing reports for Michaelmas term ⁴ of the year 20 Edward II., give us a second set of reports for 19 Edward II. They are written in a hand somewhat similar to our MS. *T*, and in single column. In the latter respect they differ from *D*, which is written in double column throughout. Fairfax's two manuscripts must have agreed very closely in size, about 12½ by 9 inches; but the additional folios may have been reduced a little to suit the binding of *D*. Each of these ten folios contains 72 lines occupying 7½ inches by 11½ inches. These data ought to be quite sufficient to enable us to identify the missing manuscript should it ever come to light.

Our next manuscript, *G*, though in the University Library at Cambridge,⁵ seems to have escaped the notice of our late Literary Director. Two or three quires have disappeared from the beginning, the first case being that of *Kennington v. Cornwall* ⁶ in Hilary term 3 Edward II. The reports are continuous until the end of Michaelmas term 7 Edward II., when there is a break, and they are not resumed until Michaelmas 10 Edward II. There is no reason, however, for supposing that the manuscript ever contained reports for the eleven missing terms. From Michaelmas 10 Edward II. they are again con-

¹ Folio 42 v°.

² As to these three cases see p. lxxii
(line 19) below.

³ Folio 360 v°.

⁴ This was the last term of the reign.

⁵ Gg—5—20

⁶ *Year Book Series*, vol. ii. p. 180.

tinuous until the end of Trinity term 18 Edward II., except that no reports are definitely assigned to Hilary and Easter terms of 16 Edward II. or to Easter and Trinity terms of the following year. On folio 30 r^o the name Tremayne occurs in the margin; and it is not unlikely that the manuscript once belonged to a serjeant of that name who practised in the closing years of the reign of Edward III. *G* is a valuable manuscript, on account of the accuracy of its text and the excellence of its handwriting. In this volume, however, it agrees almost word for word with *B*, from which the Old Edition of 1678 was printed.

Our manuscript *L* was purchased by the British Museum from the late Lord Robert Montagu in June 1863. It came to him by descent from his maternal ancestor Oliver St. John, whose signature appears on a flyleaf at the end of the book. He was a Justice of the Common Pleas from 1648 to 1663, and his is the only signature in the volume. It is divided into seven parts. The first, which is of three quires in double columns, contains reports from Michaelmas term 1 Edward II. to Easter term 3 Edward II., but the last case of the latter term, namely *Lancaster v. Stratford*,¹ is unfinished and ends abruptly on folio 27 v^o, which is the last of the third quire. The next part consists of twelve folios in single column and contains reports of the first three terms of 5 Edward II. This part also ends in the middle of a case. The third part (40 r^o–46 v^o) consists of seven folios, which are smaller than those in the other parts, and were evidently written considerably later than any of them. Its cases are undated but obviously belong to the reign of Edward III. The fourth part (47 r^o–58 v^o) contains reports of all four terms of 13 Edward II. This part is complete. The fifth part (59 r^o–65 v^o) consists of reports of Michaelmas term 14 Edward II., and a few cases in a later hand from 1 Edward III. on folios 64 v^o and 65 r^o and v^o which were probably left blank originally. The sixth part (66 r^o–116 r^o) consists of reports of the years 15 & 16 Edward II. and of Michaelmas and Hilary terms 17 Edward II. They end abruptly in the middle of a case, and probably form part of an intended volume which was never finished. This part is also defective internally, two folios between 87 and 88 and their corresponding folds between 95 and 96 having been lost. The seventh and last part (117 r^o–162 v^o) consists of reports of Michaelmas term 4 Edward III., all four terms of 5 Edward III., and a few cases of Hilary term 6 Edward III. written on the verso of the last folio.

An ancient numeration of the folios shows that when in the hands

¹ *Year Book Series*, vol. iii. p. 114.

of a former owner the parts were arranged in a different order, namely 5, 2, 3, 4, 1, 6, and that part 7, the folios of which were not numbered, was added afterwards. It is obvious, however, that the six parts, arranged as they were without regard to chronology, were numbered and bound by the direction of some owner who had little acquaintance with the Year Books of the fourteenth century. He probably found himself in possession of some fragments of Year Books, and put them together as best he could. The parts which contain reports of the reign of Edward II. seem to have belonged to four or five different manuscripts, of which other parts may even yet come to light.

The manuscript here called *M* is in the University Library at Cambridge.¹ Though there may well be differences of opinion about its date, it seems to have been written in the reign of Richard II., and possibly a little later. Its first eight folios, and two others, namely those once marked 90 and 101 in the ancient numeration, have disappeared, but in other respects it is in a good state of preservation. Beginning in the middle of its concluding case of Hilary term 2 Edward II., it contains a continuous series of reports until the end of Trinity term 18 Edward II., and will supply some useful text for many terms which are poorly represented in our other manuscripts. None of its former owners has left his signature upon its folios but, like the other Year Books of Edward II. in the University Library, it once belonged to John Moore, successively bishop of Norwich and Ely, whose collection of books and manuscripts was purchased by George I. and given to the University of Cambridge.

Our chief interest in *P*, the letter by which Harleian MS. 835 is here distinguished, arises from the individuality of its compiler, who has incorporated many reports not found in the other manuscripts. For the most part they belong to the reign of Edward I., and are inserted out of chronological order among the reports of Edward II. Some early owner, perhaps the earliest, has also added here and there a few brief notes in the margins below the text; and various references and comments in the margins opposite the cases. The manuscript has certainly undergone more early annotation than any of our others. Unfortunately no owner has written his name anywhere in the volume, and it is not even known from whom it was acquired by Robert Harley, Earl of Oxford. It was at one time in a bad state of preservation, and can then have been little more than a packet of detached folios.

¹ Ff—2—12.

It has recently been rebound, and its folios have all been attached to guards. The first eight containing reports, which are headed 'Anno primo E. secundi,' apparently belong to divers years of the reign of Edward I. The rest of the volume contains reports of the years 1 to 7 and 11 & 12 Edward II.

Next we come to the manuscript here cited as *Q*. Although what remains of it is in an excellent state of preservation it has obviously lost much. Perhaps its defects are due to bad stitching or careless binding in its younger days. In its present degenerate state it contains no cases at all for several terms in the first five years of Edward II., and many are missing for some of the remaining years. Nevertheless we may assume that it once contained a continuous series of reports as far as Easter term 5 Edward II. and perhaps as far as Trinity term in that year. Here the reports in the Common Bench cease and the next twenty-two folios are concerned with the eyre of Kent of 5 Edward II. Then the reports in the Common Bench begin again with Michaelmas term 10 Edward II., those for the years 6 to 9 Edward II. being entirely omitted. They are now continuous for four years, 10 to 13 Edward II. and then after an omission of four years they begin a third time with Michaelmas term 18 Edward II. The reports for the various terms of this year are not separated from one another by the customary headlines; but from a collation with other manuscripts it is evident that all four terms are represented in the volume. Next we have reports of Michaelmas¹ and Hilary terms 19 Edward II.; but though the reports of the latter term are introduced by the words 'De termino Hilarii anno nono decimo'² they may include a few others of a later date. After this a second series of reports of the eyre of Kent occurs differing considerably from the earlier series already mentioned. They extend from folio 181 r^o to 208 r^o, on which there begins a series of reports of cases of *quo warranto* tried in the same eyre and headed 'Incipiunt placita de quo warranto.' Then after two short notes, one on a writ of *cessavit*, the other on a matter of process, a few cases of debt conclude the volume.

This manuscript discloses the names of some of its former owners. On a blank space on folio 101 v^o we have the words 'Iste liber constat Thome Rochefort quem deus amat.' Nothing is known of any lawyer of distinction who bore this name, but the entry appears from the handwriting to have been made in the fifteenth century and his identity may yet be discovered by further research. Again on three different folios we have the signature Jakes, which is followed by a curious flourish

¹ These are incomplete at the beginning.

² Folio 172 v^o.

which suggests that it had some official significance. There was a certain Jakes who held the office of clerk of the warrants in the Common Bench in the reign of Henry VIII., and it is he who was once the owner of this manuscript.¹ It came into the Hargrave collection as a gift to Francis Hargrave in the year 1806 from Samuel Egerton Brydges, the famous antiquary and collector, who bought it, so he states on the flyleaf, 'at the sale of Jacob's Library.' He refers no doubt to the sale of the library of Edward Jacob, who died at Faversham on 26 November 1788.² The flyleaf also contains the signature of E. R. Mores, that is of Edward Rowe Mores, another eighteenth-century antiquary of some repute,³ and also a description of the contents, beginning with the words 'This MS. I bought among Mr. Harding's books.' The sale to which he refers was that of the library of the scholarly clerk to the House of Commons, Nicholas Hardinge,⁴ who owned a large collection of legal manuscripts. He died in 1758 and the sale took place in the following year, but no copy of the catalogue is to be found in the British Museum. The sale catalogue,⁵ however, of the Library of Edward Rowe Mores mentions the manuscript (lot 1531), which it describes simply as 'The Year Book of Edw. II., Fol. From Mr. Harding's Collection.' A note states that it was sold for a guinea. At the same sale two other Year Books were sold; one (lot 1534) is described as 'The Year Book of Edw. I.,' with the information that at the beginning is this note: 'Hic liber Francisci Tate de medio Templo continet. . . . Teste W. Fletewode. Folio.' The other (lot 1535) is described as a 'Year Book from 32 Edw. I. to 6 Edw. II (plura continet). 4^{to} upon vellum.' The first of these two manuscripts belonged at one time to the late Serjeant Heywood,⁶ and was purchased not long after his death by the Honourable Society of Lincoln's Inn, in whose Library it now remains.⁷ The other manuscript may almost certainly be identified with the Additional MS. 32086 at the British Museum. This manuscript was given by the late Sir Thomas Duffus Hardy to his son-in-law A. J. Horwood,⁸ and

¹ For further information about him see pp. li. and lii. below.

² *Dict. National Biography*, xxix. 114.

³ *Ibidem*, xxxix. 6.

⁴ *Ibidem*, xxiv. 346.

⁵ A copy of this catalogue is in the Library of the British Museum.

⁶ On a paper flyleaf Serjeant Heywood wrote: 'At the end is a very ancient copy of part of Britton signed also by William Fleetwood who was Recorder of the City of London in the

reign of Elizabeth to whom this volume in its present state probably belonged formerly as well as my MS. copy of reports in the reign of Edward the 3rd.' Fleetwood's signature in this part of Britton has disappeared.

⁷ He died on 11 September 1828, and the MS. was bought on 9 August 1847 from a bookseller.

⁸ The words 'ex dono T. Duffus Hardy' are written inside the cover and on the first folio 'MS. St. John.'

was purchased by the Trustees of the Museum in 1883.¹ It is not so much a Year Book as a notebook in which numerous reports have been entered somewhat capriciously and without any uniform regard to chronological order. It contains reports of the Kentish eyre of 6 Edward II., and of the Common Bench in the first six years of Edward II. and the last four years of Edward I. together with a few others of an earlier date. If, as seems likely, this is the volume which belonged to E. R. Mores, it is not quite accurately described in his sale catalogue, for its earliest dated cases are of the year 30 Edward I. and not 32 Edward II. as there stated. This manuscript has not been used in the preparation of the text of the first four volumes of this series or of the present volume. It was intended to add a few observations upon the more interesting reports which it contains in an Appendix to a subsequent volume.

Thomas Jakes, to whom the manuscript *Q* belonged, married Elizabeth, widow of Sir Thomas Frowyk, Chief Justice of the Common Bench, who died in 1506, having appointed his widow, Thomas Jakes, John Kingsmill and Thomas Roberts executors of his will. Possibly it once belonged to Frowyk, for he possessed a manuscript Year Book containing reports of several years of Edward III., and one year of Henry V., which is now in the Library of the British Museum.² It bears his own signature and that of Thomas Jakes, and it subsequently belonged to Sir John Spelman, a Justice of the Common Pleas (who married Elizabeth, daughter and heiress of Sir Henry Frowyk, brother of Sir Thomas Frowyk, and died in 1544), and to Geoffrey Caldwell³ (an attorney of that court in the reign of Elizabeth), William Fleetwood (the famous Recorder of London, who died in 1594), and Sir Edmond Anderson, Chief Justice of the Common Pleas, who died in 1605. Probably, like our manuscript *C*, it once belonged to Sir Thomas Walmisley, for it was in the possession of his descendant the late George Robert Petre of Dunken Hall.⁴ It was bought by the Trustees of the British Museum at the Phillipps sale in 1908.

Jakes himself seems to have been a collector of manuscripts. Besides his two volumes of Year Books just noticed he possessed a magnificent

¹ The sale took place on 12 June, and this MS. was lot 1336.

² Additional MS. 37659.

³ The words 'Galfridus Caldwell me possidet 1547' occur on the flyleaf. He was the only son of Ralph Caldwell of London, who was buried at St. Anne's by Aldersgate, and Anne, daughter of Hugh Reading. He died unmarried leaving an only sister Joan, the wife of Thomas

Faringdon (*Harleian MS.* 1196, f. 711). Geoffrey seems to have possessed a collection of manuscripts including Lydgate's *Life of the Virgin Mary* (*Cotton MS.* App. viii.) in which his signature appears on f. 40 v^o, and a medical treatise, *Sloane MS.* 3557 (in which his signature also occurs, f. 5).

⁴ See p. xlv above.

volume of statutes with finely illuminated borders and initials. The arms which are depicted on several of its folios may throw light on some other legal manuscripts and their owners. On folio 44 we have the arms of Callow and Twiss, on folio 90 those of Callow and Spenser of Witton in Staffordshire, and on folio 127 those which have been attributed to an obscure family called Addott. On three subsequent folios the arms of Callow are impaled with Twiss, Spenser, and Addott¹ respectively, but the arms of Jakes are nowhere depicted in the volume. Nor have I been able to discover any relationship between Sir William Callow, the Justice of the Common Bench mentioned on an earlier page, and the families of Twiss, Spenser and Addott.

Jakes' will,² dated 20 January 151 $\frac{2}{3}$ and proved in the Prerogative Court of Canterbury on 13 July 1514, contains the following bequests:

To my brother John Fowlar the best horse I have at Wyllsborough one of my gowns and such a boke of lawe of myn as he wyll chose. Item I will that my said good lady and wyffe delyuer to the Company of the Inner Temple my fayer boke of the newe statutes wryten and lymed³ and my greate boke of entres which were my singuler good lord Frowyckes there to remayne in the Librarie to the intent they shuld the better remember my said good lord her late husbond herself and me. . . . Item I bequethe to Richard Belamy John Chauncy Robert Hawkes and Thomas Robertes euery of them a boke of lawe or xxs. in money for the same at their pleasure.

The manuscript here called *R* is in the University Library at Cambridge.⁴ It belonged in the Tudor period to one William Shelley,⁵ presumably the distinguished Justice of the Common Bench in the reign of Henry VIII. The manuscript is now incomplete and ends abruptly in the middle of a case, but it contains a continuous series of reports from Michaelmas 2 Edward II. to Michaelmas 7 Edward II., the reports of the last term being unfinished. It is much damaged in places by damp, and many cases, notably those of Trinity term 4 Edward II., cannot now be deciphered.

Our manuscript *S* (Harleian MS. 1062 at the British Museum), once belonged to a certain Edmund Hord, whose name appears upon a flyleaf at the beginning of the volume. He may perhaps be identified with the Hord who was clerk of the warrants in the Common Bench

¹ I have been unable to learn anything about this family except in Heraldic works of reference and strongly suspect that the arms are those of some other family the name of which has been misread.

² The reference is 2 *Holder*.

³ I am informed that this manuscript is not in the Library of the Inner Temple. Possibly it was never delivered to the 'Company,' in which case it may be the volume described above.

⁴ Dd—9—64

⁵ See folios 1 r^o, 49 r^o, and 64 r^o.

in the reign of Elizabeth. Another owner was Edmund Cock or Cokes, whose name appears on a blank folio at the end of the volume. No lawyer of distinction bearing this name is known, but the will of one Edmund Coker of St. Mary Church, Devon, was proved in 1616, and perhaps the signature is his. The manuscript was given by John Anstis, Garter King at Arms, to Robert Harley, and passed with his collection into the British Museum. Though irregular in structure, and damaged by the loss of a few folios, it contains much valuable material for this edition. A report of the London eyre of 14 Edward II. with a brief table of cases occupies its first twelve folios. This is followed by the Kentish eyre of 6 Edward II., which ends on folio 31 v°. After a half folio containing an index of the preceding and a few other cases, the reports of the Common Bench begin with Michaelmas term 3 Edward II. on folio 33 r°. There are no headlines for Easter term of this year; and on folio 48 r° the cases of Trinity term end abruptly. On folio 48 v° we have the undated case of *Thornton v. Lichfield*, which is followed by two assises assigned in the margin to the seventeenth year of the reign. Then after a short and undated case of trespass we have the headline 'De termino Michaelis anno regni regis Edwardi filii regis Edwardi decimo octavo' relating to the cases on this and the four following folios. The reports of the Common Bench are now resumed, and folios 54 r° to 145 r° contain reports of every term from Michaelmas 10 Edward II. to Trinity 17 Edward II. Folios 147 r° to 160 v° contain cases of Michaelmas, Hilary and Easter 18 Edward II., but these folios have not been bound in the true order and at least two folios are missing entirely.

Some early owner of this manuscript began to compile a table of its contents, arranging his entries according to the subject-matter of the cases on various blank or partially blank folios; thus 'waste' occurs on folio 12 v°, 'entry ad terminum qui preterit' on folio 71 r° and 'account' on 145 r°. This table shows that the manuscript never contained reports of the year 4 Edward II., nor of the years 6 to 9 Edward II., but that a quire of folios containing reports of 5 Edward II. has disappeared.

Our manuscript *T* (Harleian MS. 3639 at the British Museum) would be more serviceable if it were less defective. Well written and carefully copied, it contains reports of very nearly every term from Michaelmas 3 Edward II. to Michaelmas 19 Edward II. Nine or more folios have unfortunately disappeared from the beginning, which accounts for the lack of reports for the first two years, and for part of Michaelmas term of the third year. Twelve folios have also disappeared from the

middle of the volume, so that we have part only of the reports of Michaelmas term, none for Hilary, Easter and Trinity terms of 7 Edward II. and a few only for Michaelmas term of the following year. Owing to the loss of four folios we have part only of the reports for Easter, and none for Trinity term of 11 Edward II., while some for Michaelmas term 12 Edward II. are missing. Another folio (between 91 and 92) is missing from the reports of Hilary term 12 Edward II.; and one or more from those of Michaelmas term 13 Edward II. From this term to the end of the year 18 Edward II. we have a continuous series of reports except that part of folio 171 in Michaelmas term 18 Edward II. has been cut away. The reports end abruptly in the middle of a case of Michaelmas term 19 Edward II. The volume probably contained a complete series of reports of this reign.

This manuscript was bought with many others, on 16 July 1720, from the celebrated antiquary and collector John Warburton, by Humphrey Wanley, the librarian of the Earl of Oxford. Its binding seems to date from the early part of the eighteenth century: but it is impossible to speak confidently on the point. It was carelessly bound, several folios being misplaced to the great inconvenience of its readers. Fortunately two ancient numerations in Arabic figures, the one at the head, the other (but as to the first 90 folios only) at the foot of each folio, enable us to correct the binder's errors without difficulty. The folios which are now officially numbered 13 to 18 should, if placed in their correct order, succeed one another as follows: 13, 14, 18, 17, 15, 16. Similarly the true order of the folios now numbered 101 to 106 should be 101, 104, 106, 105, 102, 103.

Our only manuscript in the Bodleian Library is the Tanner MS. No. 13, here called X. It contains brief notes of cases heard in the Common Bench in every year of the reign of Edward II. except the first; and also reports of the Kentish eyre of 6 Edward II. and the Northamptonshire eyre of 3 Edward III. The cases of the first year have probably been cut away; those of Trinity term 8 Edward II. are missing, and Easter is not separated from Hilary term of 16 Edward II. Nor is the manuscript quite uniform in character, for in place of brief notes we occasionally have reports of some length, as for example in Michaelmas, Hilary, and Easter terms of 8 Edward II. Among its most interesting features are a few scattered reports of assizes taken before Justices specially assigned for the purpose. Some of them are not dated; others are described as having been taken at Dartford and Grinstead in 19 Edward II.; at Maidstone, Horsham and Guild-

ford in 5 Edward III., at Grinstead and Croydon in 7 Edward III., and at St. Albans in 15 Edward III. The names of the justices before whom they were taken are not always apparent from the reports; but John de Bousser seems to have been in all these special commissions before 3 Edward II. and Bacon in those after that date. Possibly these brief notes were made by some person who was successively clerk to these two justices, and he may have also abridged the reports in the Common Bench.

The manuscript was given by Thomas Alwyn, who is described on a blank folio as lately rector of Broughton, to Sir Robert Brudenall at the time when he was Chief Justice of the Common Bench.¹ Sir Robert was appointed to this office in 1521, and died ten years afterwards. It perhaps belonged subsequently to Sir Edward Montagu, for the signature of a person bearing that name appears at the end of the volume. He was Chief Justice of the King's Bench in 1539 and of the Common Bench in 1545. A later owner was John Akeroyd, who perhaps may be identified with the John Akeroyd of Bubwith,² the son of Henry³ Akeroyd who was admitted a member of the Inner Temple in 1632. Thomas Tanner, into whose collection it afterwards passed, was Bishop of St. Asaph and died in 1733.

Of all our manuscripts Y⁴ is perhaps the fairest and most pleasing to the eye. Written in a fine clear hand in double columns and well-spaced lines, it certainly is of exceptional beauty. Its cases, belonging to the last five or six years of Edward I.⁵ and to the first four and a half years of Edward II., are arranged as already explained in order of subject-matter. Many of the cases of Edward II. are not reported elsewhere; and most of them differ so much from our other versions that it has been necessary to print them in full. Possibly the later reports are by one author and the earlier by another or others. Throughout the volume the cases are sparingly dated; and apparently it is chiefly among the later cases that we meet with dates. This is of itself a very slight indication of difference in authorship and it may perhaps be attributed to a

¹ It is not quite certain that the two consecutive entries—'Ex dono Thome Alwyn nuper rectoris de Broughton' and 'Roberto Brudenall militi capitali justiciario communis banci iste liber pertinet'—are intended to be connected.

² The expression 'nuper ex libris Iohannis Aikeroyd' suggests a seventeenth-century owner; and the handwriting appears to be of the first half of

that century.

³ He is probably the same person as Henry Akeroyde of Bubwith, eldest son of John Akeroyd. This Henry was admitted to the Inner Temple in November 1592.

⁴ Additional MS. 35116 at the British Museum.

⁵ It contains a few of earlier date than this.

reporter having learnt by experience that dates were useful to his readers. There are however other indications of such difference. We may notice that Latin records are less common among the later than among the earlier cases. Indeed a large part of the volume contains the records of assises of novel disseisin and mortdancestox which are often unaccompanied by reports, but a more conspicuous difference may be noticed in the character of the brief notes which occur among the later cases. Many of them are written in the first person singular and reveal to us an author active in the pursuit of legal knowledge. He tells us the opinions of various serjeants, apprentices and clerks given on express enquiry or in the ordinary course of conversation. Notes of this character appear in the later cases only. Apparently he made his own reports for some years and added to them brief notes on legal principles and practice. Then he rearranged his reports and notes according to subject-matter and inserted among them as many earlier reports and records as he could find. As a general rule in his rearrangement he dated the cases which he had reported himself, but hesitated to date those which he borrowed from others.

Sir Thomas Phillipps bought this manuscript from the late Mr. George Robert Petre of Dunken Hall, and it was acquired by the British Museum at the Phillipps sale in May 1897. It is highly probable for the reasons already stated that like the Additional MS. 37658 it once belonged to Sir Thomas Walmisley. In both manuscripts certain marginal notes occur which seem to have been made by one and the same person in the early Stuart period. Possibly it may be shown that Sir Thomas Walmisley wrote them. Several other owners have written their names in this manuscript. Those of John Denton of London and Thomas Denton both occur on the last folio. Possibly the latter was Thomas Denton of Hillesden, who died on 20 July 1557, and the former John Denton his brother. On the same folio a name has been carefully erased. The compiler of the British Museum catalogue has read it as 'Thomas Cary (?) . . . professor medii Templi.' Careful investigation has shown that the missing word is 'legis,' with its last two letters represented by a mark of contraction. The surname also seems to be a longer one than Cary. Its first letter is almost certainly a *G* and the fourth may be a *g*. A fifth and the last legible letter looks very much like an *r*. We may therefore conjecture that the manuscript once belonged to Sir Thomas Gargrave, who was Speaker of the House of Commons in the reign of Elizabeth. He was never called to the Bar, but may have been admitted a member of the Middle Temple. Even so, the description of a man who was not a barrister as 'professor legis'

is remarkable and the reading of the surname as Gargrave must be regarded as very doubtful.

The only name on the first folio of the manuscript, that of Thomas Nowell of Preston, has been described as written in a hand of the fourteenth century. Several members of the family of Nowell were well known in the legal profession, and one of them, Robert Nowell, became attorney-general of the court of wards and liveries in the reign of Elizabeth; but how he was related to Thomas Nowell of Preston remains to be ascertained. On folio 2, which is a flyleaf, the name of Hengescot has been twice written in a hand of the fourteenth, or perhaps early fifteenth, century, and at the foot of a folio in the middle of the manuscript we have in the large letters of a brass or monumental inscription the name of Topclyf.¹ Nothing is known of any person of distinction who bore either of these names. The manuscript at present contains 294 folios, the first and the last of these are pasted on to the covers; and the second and third are flyleaves. Sixty folios have been misplaced and now come after folio 207, whereas they should have been inserted after 291 at the end of the volume. An ancient numeration of the folios shows that this misplacement is not to be attributed to a modern binder. The manuscript is also incomplete, as the last of the sixty intrusive folios and the last folio of the book as now bound end respectively in the course of a case. Three folios are missing in the middle of the volume, that is to say after folios 65, 117 and 156 respectively. On the other hand three extra folios were inserted after the book was written; they are now numbered 43, 82 and 114.

The last of the manuscripts used in this edition is in the Library at Lincoln's Inn. Its first four folios contain reports which appear to relate to Easter term 8 Edward III. They are written in double column, and spaces are left here and there for some omitted cases. These reports differ not only from those found in another part of the manuscript but also from the printed text in the edition of 1678. They evidently formed no part of the manuscript volume as originally bound. After these four intrusive folios we come to thirty-six folios containing a long table or kalendar of the reports which follow it. This kalendar is arranged according to the writs by which the reported cases were initiated, the references to the folios being given in early Arabic numbers. The text of the Year Book consists of (1) cases in the Common Bench with a few in the King's Bench from 1 Edward II. to Michaelmas 19 Edward II., (2) cases and proceedings in the eyre of Northampton-

¹ Folio 174.

shire and Derby in 3 & 4 Edward III., and (3) cases in the two Benches from 1 to 9 Edward III. The manuscript seems to be written in one hand almost throughout, but the arrangement of the reports is not uniform. We find the cases arranged year by year according to subject-matter and without division into terms for the first ten years of Edward II.; but from 11 Edward II. to the end of the reign they are arranged in the usual fashion. It may be noticed that the reports of 10 Edward II. begin towards the foot of folio 66 v^o in the usual single column; they are continued on folios 67 r^o, 67 v^o and 68 r^o, but in double column. On folio 68 v^o the reports of 11 Edward II. begin and they are once more in single column. This leaves us with the impression that the work of transcription was twice suspended in this part of the manuscript, once on the completion of the ninth year, and again on the completion of the tenth year.

The arrangement of the cases which belong to the reign of Edward III. is not a subject which can be considered in detail in this Introduction. It is sufficient to observe that the reports of the year 4 Edward III. are arranged like those of each of the first ten years of Edward II. according to their subject-matter and without regard to terms. The rest of the cases of this reign are reported in the usual fashion; the only points of interest about their arrangement being that there are no cases for certain terms, namely Hilary and Trinity 1 Edward III., Easter, Hilary and Trinity 3 Edward II., and Trinity and Michaelmas 6 Edward II. The printed reports, however, of Easter 1 Edward III. agree with the manuscript reports of Hilary term; and the manuscript gives the first nine cases only of those printed in Michaelmas term of that year. Instances such as this of a series of cases being attributed to a wrong term are not uncommon in the manuscripts of the fourteenth century. They support the view that the early Year Books circulated in single terms or short series of terms and not in large volumes of complete years.

This manuscript was given to Lincoln's Inn Library by George Anton, who was called to the bar on 45 June 1584 and afterwards became Recorder of Lincoln.¹ A century earlier it had belonged to John Clerk, a Baron of the Exchequer in the reign of Edward IV., as may be seen from the following inscription on the last folio:

Liber magistri Iohannis Clerke unius baronum scaccarii domini regis Edwardi quarti anno ipsius domini regis octauo de Greys Inne. 1468.

Apparently 1468 was the year when John Clerke acquired the

¹ *Fourteenth Report of Historical Manuscripts Commission*, Appendix, pt. viii. pp. 73, 86, 92.

manuscript, for he had been appointed second baron eight years earlier. Another owner was a certain Urswick, whose name appears in a fifteenth-century hand on four different folios. He may probably be identified with Sir Thomas Urswick who was appointed Common Serjeant of the City of London on 27 June 1453, Recorder on 3 October 1455, and Chief Baron of the Exchequer on 22 May 1472. He was almost certainly a member of Gray's Inn, for he was one of several distinguished lawyers to whom with others Reynold de Gray granted the manor of Portpool in 1456.¹ The name Johan Byrkryg, which is perhaps intended for Johan Byrkryng, occurs on another folio² in an ancient but not very clear hand. It has not as yet been identified.

One of the most interesting features of this manuscript is a name which appears at the top of the right-hand margin of several folios.³ It is plainly written (with one or two slight variations in spelling) as Knaresburgh, and though it is impossible to speak confidently it seems to be in the same handwriting as the manuscript. We may at least suspect that it is the name of its writer. There can scarcely have been a better object in the inscription of the name on these folios, than to testify to the authenticity of the copy. It is as if the writer were to say: 'These are the reports of the years here mentioned, as Knaresburgh witnesses who wrote them.' We fortunately have a hint of his identity. Between the reports of the reign of Edward II. and those of the eyre of Northampton a folio⁴ was originally left blank, and on this at some later date three documents have been copied, all of which relate to the forest of Knaresburgh. The third of these documents, an agreement⁵ made in the form of a chirograph, is dated 30 March 1285, and one of the witnesses to it was a certain Robert of Knaresburgh, who is likely to have been the writer of the manuscript. He was possibly the person of that name who was acting as attorney of Elizabeth widow of John of Burgh in the reign of Edward II. and the early years of Edward III.⁶ But though he was probably the writer of the manuscript there is no reason for supposing that he was himself a reporter. He was a clerk and an attorney, who perhaps made this compilation for some person interested in law or possibly made it for his own edification. How far the manuscript contains any original work in the way

¹ *Pension Book of Gray's Inn*, i. p. xx.

² Folio 176 v^o.

³ Folios 43 r^o, 51 r^o, 61 r^o, 69 r^o, 301 r^o and 313 r^o.

⁴ Folio 240.

⁵ The agreement was made between Edmond Earl of Cornwall of the one

part and Sir Robert of Plumton of the other part.

⁶ *Calendar of Letters Patent*, 1321-4, p. 228; *ibidem* 1327-30, p. 365, *ibidem* 1330-4, p. 4. In the year 1334 he appears to have been in Ireland.

of abridgement and revision is a matter for further consideration. Like Winchendon, whose manuscript Selden saw in the Inner Temple Library,¹ Knaresburgh may have been a man of learning. Several clerks who practised as attorneys at this period were entitled to the prefix 'Master,' and had studied at a university. Robert of Knaresburgh was apparently not entitled to be called Master, but he may yet have possessed a considerable knowledge of English law. The chief difficulty in accepting the view that he was the actual writer of the manuscript is the fact that twelve names or words which have with one exception been more or less successfully erased are inscribed respectively in the top margin of each of the folios 43 v^o to 49 r^o. Their position, however, is a little different from that of the name 'Knaresburgh,' and they appear to have been written at a later date. The only one of them which has not been wholly or partially erased seems to read as 'Omolryan'; and it is very uncertain how many of the other names or words differ from this or from one another. For the present they must remain unexplained.

If we have been unable to trace the history of any one of our manuscripts from its infancy to the present day, we can at least notice a large proportion of men of erudition and legal distinction among their owners of the Tudor period. At a later date they were regarded with affection by distinguished jurists such as Selden and Hale, and were prized by famous collectors such as Fairfax, Rawlinson, and Harley. It is evident that at no time since the reign of Henry VIII. were manuscript Year Books poorly appreciated, and we may doubt whether any considerable number of them have perished in the last four centuries. A few copies lingering in private collections may be still unknown to legal antiquaries, and there may even be a few in public libraries which have escaped their notice. We cannot hope to hear of many more still in good condition. With regard to those which have perished we may perhaps know more when the Abridgements have been studied carefully and those which their compilers used have been divided into the known and the unknown. Finally the history of the manuscript Year Books of subsequent reigns, and the study of their annotations, may reflect some faint light on those of the reigns of Edward I. and Edward II.

¹ *Year Book Series*, vol. i. p. 30. This manuscript appears from the statement in *Icon Libellorum* (p. 322) by Myles Davies to have been in the Inner Temple Library in 1715 or shortly before that date. He remarks that it is 'so fairly writ that it is easier to read than the first edition in print.' In point of fact there was no second edition of Maynard's Year Book.

A second and important point to notice is that in some of our manuscripts the reports of several years and terms are missing—notably, in *A*, Easter 4 Edward II. to Trinity 9 Edward II.; in *G*, Hilary 7 Edward II. to Trinity 9 Edward II.; in *L*, 6 to 12 Edward II.; in *P*, 8 to 10 Edward II.; in *Q*, 6 to 9 Edward II.; and in *S*, 4 to 9 Edward II. There is no reason for thinking that these omissions are due to the loss of quires and folios; for *A* and *G* are in an excellent state of preservation, and if *L*, *P*, and *Q* have been sadly damaged they disclose no indications of ever having contained the missing reports. It is much more probable that the reports for certain years were so scarce that compilers of Year Books often found it impossible to make their volumes as complete as they wished. Reports seem to have been especially scarce for the years 7 to 9 Edward II. Even *C* which includes all these three years contains very few cases for the eighth and ninth years. All this accords with the view that the reports of the fourteenth century circulated as small pamphlets containing the reports of a few terms only, and that our large Year Books containing reports of many years were compiled from collections of the small pamphlets. On this subject there is some discussion in the next section of this Introduction.

One other source of Year Book history must be briefly mentioned. Palaeography is rapidly becoming more and more useful as an auxiliary of historical investigation. Those only who have studied the many technicalities of this abstruse science long and critically can draw inferences from the handwritings of our Year Books, which others can safely trust. The precise dates when they were written can never be more than a matter of conjecture, but we can at least hope to learn if any two or more of our manuscripts have been written wholly or partly by one and the same person; whether an apparent change of writing is due to a scribe resuming work after an interval, or to the task of copying having been transferred to another; and to what class or classes of scribe the men who wrote the Year Books belonged.

In conclusion attention may be drawn to the First Appendix to this Introduction which contains particulars of the quires and folios of our different manuscripts. It is a matter of great importance to know precisely how the quires were formed, and how far they remain intact. It constantly happens that the reports of a new year begin with the first folio of a quire, and sometimes when a year occupies less than a complete quire the blank folios are cut away or are used for notes. On this subject we need all the information which can be collected. In

the Appendix I have adopted a method of describing the quires which is, I believe, entirely new. The numbers of the first and last folios of each quire are printed above a short line, and the number of the folio which precedes the stitching of the quire is printed below the line. Thus $\frac{135-142}{138}$ describes a quire having 135 and 142 for its first and last folios respectively and its stitching between 138 and 139. In most great libraries the folios of manuscripts have in recent years been renumbered in pencil, and this is the numeration used in the Appendix. Unfortunately the system of numeration varies. Some librarians assign no number to blank folios; whereas others designate them by the number of the last folio on which there is writing, together with the distinguishing letters *a*, *b* in alphabetical order. This difference of practice, however, leads to some confusion. It is obvious that every complete quire contains an even number of folios. Where the description in the Appendix appears to show an uneven number this is due either to the presence of a blank and unnumbered folio or to the fact that a folio or some odd number of folios has been cut away. Attention is drawn to all such cases by a note; and where a folio has been cut away, the number of the folio to which it was once the half-fold or 'conjugate' is also specially mentioned.

4. THE RELATIONS OF THE MANUSCRIPTS TO ONE ANOTHER.

The theory that our Year Books were compiled from small pamphlets or gatherings containing the reports of a few terms only needs some explanation. When our large volumes of Year Books were compiled they were no doubt occasionally copied *verbatim* or almost *verbatim*. Being no larger than manuscripts of Bracton and Britton, they were just as easy to copy from cover to cover. But copies of this sort were derived ultimately from the same source as the manuscripts from which they were immediately copied, and have no special history of their own. The theory in discussion, which may be called the 'pamphlet' theory, is put forward in opposition to one which seems to say that our Year Books were compiled by selection from various other manuscripts of the same character as themselves; that their compilers had before them several manuscripts, not all of them the work of the same reporter, and that when they were about to copy a particular case they examined carefully the different manuscripts to see which gave the best report. In short, the compiler of the large volume (the Year Book as we know it) is on this theory an editor. On the 'pamphlet' theory the compiler

is not an editor, but an intelligent, or fairly intelligent, transcriber, who, nevertheless, may sometimes have abridged, omitted, and even inserted, cases. Normally, however, he was a reproducer of texts rather than the author of original work. But it must be admitted that the 'pamphlet' theory cannot as yet be stated in very precise language. We cannot say whether the pamphlets in their earliest forms circulated as the reports of one or of two or more terms, nor whether from the first there were rival pamphlets giving different reports of the same cases. When more volumes of the Year Books of Edward II. have been edited and their contents critically examined, information will probably be at hand which will enable the theory to be stated with more precision.

No manuscript pamphlets containing the reports of single years or terms of the reign of Edward II. are known to have been preserved. Their former existence is purely a matter of inference. In the first place the gaps of various lengths in our large Year Books can, as already stated, be well explained by the 'pamphlet' theory, and no other explanation seems to be so satisfactory. Then we have the evidence of the early printed Year Books. A considerable number of them were first printed as pamphlets containing the reports of one year only. We may notice: 20 Henry VI., published between 1480 and 1490; 3 Henry VI. and 9 Henry VI., between 1490 and 1500; and 22 Edward IV., between 1500 and 1510. It is much more probable that the early printers published the reports of these years, because they were able to obtain manuscripts of them, and none of longer periods, than that they selected them out of large manuscripts containing the reports of many years. Moreover, we know that Pynson published a second report of the year 21 Edward III., which belonged to Sir William Whorwood.² If Whorwood's manuscript contained other years he would almost certainly have printed them as well as the year 21 Edward III.

We are accustomed to calling the reports of the Middle Ages Year Books, but in their early days they seem to have been called just as frequently Books of Terms. In the famous passage in which Chief Justice Prissot mentions Year Books¹ he speaks of 'Students in Terms.' Even in the preface to the folio edition of the Year Books published in 1679 we read of Books of Years and Terms. Thus it would appear that the term rather than the year was the original unit of the book of law-reports. A small pamphlet containing the reports of a single term, or of a few terms only, may be described as a 'book of terms' as properly as, and even more properly than, a large volume containing the reports

¹ See *Year Book Series*, iii. p. xv.

² See p. xxviii above.

of many years. Indeed we may suspect that it was only when the small and perishable pamphlets, each containing reports of a few terms only of the reign of Edward II., were becoming scarce, and their contents were becoming known through larger volumes, that the phrase 'Book of Years' gradually began to take the place of Book of Terms. In the early Tudor period, however, judges and lawyers generally referred to the reports neither as Books of Years nor as Books of Terms, but as 'books' simply. In Trinity term 1 Edward V. it was said 'by divers apprentices present at the bar that it is adjudged in *our books*.' We have also seen on an earlier page¹ that when Jenner the prothonotary said that he could show a precedent, Fitzherbert, one of the judges, replied that he could show 'many books' in support of what he had said. On another occasion the same judge remarked² that he could show 'divers books adjudged on that point,' by which he seems to have meant divers cases in different books; also on a third occasion, that he could show 'four books adjudged to the contrary.' When he speaks of these four books he can scarcely have meant four large volumes of reports, for some of his cases would almost certainly occur in the same volume. It is much more likely that he meant by a 'book' the reports of a single year or of a short series of years.

An interesting document in which books of terms are mentioned may here be noticed. The will³ of one John Langley of Soddington St. Peter in the county of Gloucester, dated 4 December 1458, and proved in the Prerogative Court of Canterbury on 23 November 1459, shows us that his collection of legal books included four volumes of reports in the Courts of Westminster in addition to two copies of the 'Books of Assizes.' The reports are described as follows:

- (1) A book of terms of the years 38 and 41-43 Edward III. and 2, 7, and 13 Richard II.
- (2) A book containing four or five years of the 'forties' of Edward III.
- (3) A book containing many cases and divers terms, *viz.* 28 Edward III., and 2, 7, 8, 11, and 13 Richard II.
- (4) A book of two unnamed years of the reign of Henry VI.

The first and third of these volumes seem to have been compiled from manuscript pamphlets containing reports of single years, most of which were not consecutive. The second was probably compiled from pamphlets, but as the years are not specified we cannot be certain;

¹ See p. xiv, above.

² *Ibidem*.

³ My attention was drawn to this very interesting will by Miss E. Stokes.

and the fourth cannot have been more than a pamphlet as it contained two years only. The material part of the will ¹ is as follows :

Item volo quod liber qui vocatur Actus Apostolorum ligatus et coopertus cum panno lineo quem habui ex deliberacione . . . Mylis adtunc Canonici in Abbathia de Cirencestre redeliberetur domui predicte. Item unum Rotulum armorum quod habui ex deliberacione Ricardi Collesborne Canonici apud Cirencestre redeliberetur eidem domui. Item una quaterna grammaticalis quam habui de Iohanne Chestirton redeliberetur domui predicte. Item unus liber de terminis viz de annis xlj^o ij^o iij^o et xxxvij^{to} et ij^{do} Ricardi vij^o et xiiij^o redeliberetur Filoll aut executoribus patris sui ad disponendum pro anima patris sui. Item alius liber assisarum² scriptus in paupiro et ligatus quem habui ex deliberacione Rogeri Capis redeliberetur executoribus predicti Rogeri ad disponendum pro anima ipsius Rogeri. Item quidam liber in pargameno de assisis nuper Willelmi Poole redeliberetur executoribus suis. Item alius liber vocatus a Manuell in lingua gallicana redeliberetur executoribus predicti Willelmi aut heredi suo ad disponendum pro anima sua. Item alii libri qui sunt mei proprii unde unus restat in custodia Iohannis George de Whitehors et continet quatuor vel quinque annos³ de quadragesimis Edwardi tercii. Item alius liber meus qui restat in custodia Roberti Hogges in quo continentur multi casus ac diuersi termini viz. [de] annis ij^o vij^o viij^o xj^o xiiij^{mo} Ricardi necnon xxvij^o Edwardi tercii et plura alia que ad presens ignoro ; volo quod vendantur et disponantur pro anima mea per executores meos. Item liber de terminis de duobus annis istius Regis volo quod vendatur et disponatur pro anima eius de quo habui illum librum secundum disposicionem executorum meorum.

Item michi debetur pro feodo meo annualis redditus de xl.s annuatim michi soluendorum per Abbatem Gloucestre de communi consensu Conuentus ad terminum vite mee, unde summa arreragiorum restat insoluta xxiiij. li. quam quidem summam volo quod habita consideracione de redditu eiusdem domus in Gloucestre existente nuper per consilium meum recognito et domui predicte retornato quod predictus Abbas et Conuentus soluant predictam summam executoribus meis. Alioquin quod ipsi Abbas et Conuentus respondeant coram deo nisi gratiam meliorem habeant de executoribus meis aliter pro anima mea disponenda. . . . Item volo quod duo libri mei viz. liber statutorum et alius Registrum quos nuper emi de Margeria sorore mea pro quatuor libris vendantur et disponantur pro anima mea Prouiso semper quod si Willelmus Langley, Iohannes Langley vel Edmundus Langley consanguinei mei vel aliquis eorum voluerint emere predictos libros et dare pro dictis libris sicut ego dedi viz. iiij.^{or} li. preferantur pre omnibus aliis.

If the 'pamphlet' theory is to be accepted as good, it will be necessary to satisfy ourselves by an examination of the reports year by year that it is consistent with their contents and arrangement. But before starting on this examination we must notice and briefly consider

¹ For this will see *Stokton*, 18, at Somerset House. ² MS. ' assisis.' ³ MS. ' annis.'

a few important facts. The cases which are common to the different manuscripts often occur in different order ; some manuscripts contain reports which are altogether missing in others ; and according to our late Literary Director—the highest authority on the Year Books of this period—some of the reports of the same case in one manuscript, or in one group of manuscripts, may be altogether independent of the reports in the other manuscripts. These, however, are difficulties which must be faced, to whatever theory of the origin of the Year Books we incline.

Let us suppose that a clerk is directed to copy a pamphlet containing the reports of a few terms only. If he make his copy as accurately as he can he will transcribe the pamphlet as he finds it, incorporating its corrections, and perhaps some of its marginal additions. Possibly he will find passages which are, or which seem to him to be, corrupt, and others which, through the bad preservation of the parchment or for some such good reason, he cannot read satisfactorily. Here he will have to construct a text for his copy to the best of his ability. Thus two scribes each endeavouring to copy accurately the same pamphlet might produce two texts differing in important points. The readings might vary considerably in places, and certain marginal notes and additions might occur as part of the text in one copy, and not at all in the other. Their texts would have differed still more from one another if they had been copied from different transcripts of the same pamphlet. In particular we should not be surprised to find that an extra case, or a few extra cases, occurred at the end of some copies, and not at the end of others which purported to be the same reports. A pamphlet would often have one or two blank folios or part of a blank folio at the end, on which an owner would be tempted to add some additional matter. In copies derived from this one, the additional matter would no doubt sometimes be incorporated with the main text.

So far we have been considering copies which purported to be accurate, copies such as would be made in accordance with a direction from the scribe's employer. It might often happen, however, that the scribe copied the pamphlet on his own initiative. Here he would feel himself less strictly bound to accuracy of arrangement. He might occasionally like to take a case out of its order, selecting one of such length as suited the time at his disposal. He might sometimes wish to abridge, or to omit, some unimportant cases, so as to obviate the necessity of using more parchment than he had beside him. In looking through our manuscripts of the Year Books we cannot fail to notice the anxiety of their scribes to begin the reports of a year with a new quire. In order to effect this whole folios are left blank,

and in all probability cases are sometimes abridged or omitted for a like purpose. When we find this anxiety a conspicuous feature of our large Year Books we may be pretty sure that a desire to confine their cases to a limited space prevailed among the scribes who compiled the small pamphlets, and that it had an important effect upon the transmission of the text of the reports.

Nor is the existence of two or more apparently independent reports of certain cases in the different manuscripts in any way inconsistent with the 'pamphlet' theory. It might be suggested that from the beginning independent collections of reports of the cases, being the work of rival reporters, were in active circulation. It is true that many of the reports in *Y* seem to be altogether different from those in the other manuscripts; but *Y* is unique. It differs from the other volumes not only in the arrangement of its cases by subject-matter instead of by terms, but also in containing numerous notes and observations which disclose the personality of its author. He usually reported his own cases, though occasionally he seems to have copied the reports of others. It is very probable that other young lawyers or even clerks were, like the author of *Y*, making reports and notes of cases for their own instruction in the early years of Edward II., and perhaps some of their work found its way into the pamphlets from which, I believe, the Year Books were derived. But it is an entire mistake to suppose that the number of apparently independent reports is large. It is often convenient to print two or more versions of the same case; but it should not be assumed that in every instance in which two versions are printed in this edition the reports are entirely independent of one another. They are printed because their texts contain too many variants for them to be adequately represented in footnotes to any other printed version. If we exclude *Y*, we shall find that in the first four volumes and the present volume of this series the number of reports which have any decided appearance of being independent is far from large. Moreover, there is no sufficient reason for supposing that these apparently independent reports were really independent in the sense that they were the original work of other reporters than those who were responsible for the rest of the reports. It is more probable that such original work as they contained appears by way of occasional substitution of an improved version of an unsatisfactory report rather than as part of the work of men who were reporting continuously.

Thus, if the reports of a term or a year in two different manuscripts are in substantial agreement except for two or three cases which are

very different, the safest inference is that the reports in both manuscripts were by the same author, but that a critical owner of one of them has substituted reports of his own for a few which he considered unsatisfactory. Such an owner might either have been a lawyer or a clerk who had taken the trouble to make his own report of a case which interested him; or a serjeant who had argued the case in question. If these substituted reports were the work of some lawyer of distinction the pamphlet in which they were first inserted would no doubt be extensively copied. Probably in the first instance they would be written at the end of the pamphlet, and the old versions would be respectively cancelled by some such words as 'uacat quia melius inferius.' In subsequent copies the older version would probably be omitted, and the new one substituted for it, but it might happen sometimes that both versions would be retained. It is absurd to suppose that transcribers had one uniform method in these matters. In our large volumes of Year Books interesting substitutions of this character may be noticed. Thus on folio 48 r^o of *C* the first version¹ of the case of *Mortimer v. Ludlow*, which was heard in Michaelmas term 2 Edward II., has been carefully erased, and on folio 61 r^o the second version² is found. In this instance the erasure seems to have been due to the owner finding that he had two reports of the same case in his manuscript; but the later version was probably intended to be in substitution for the earlier one in the pamphlet in which it was first inserted.³

We may now begin an investigation of the history of the text of the Year Books of the first four years of the reign of Edward II. in the light of the detailed particulars which follow. They are necessarily long and tedious, but when they have been carefully considered it will be easy for the reader to test the 'pamphlet' theory for himself and to form his own conclusions. It must be remembered that the manuscripts of the Year Books are in four different repositories, and that the printed volumes of our series by reason of their size are not easily carried from place to place. It is therefore not unlikely that in the particulars of some of our manuscripts a few brief notes have

¹ *Year Book Series*, ii. p. 43.

² *Ibidem*, p. 45.

³ Another case of an erasure, but in somewhat different circumstances, may here be noted. In the margin of folio 86 v^o in *C* opposite the case of *Thorne v. Peche* heard in Easter term 3 Edw. II. (vol. iii. p. 93) there is a reference to folio 204 r^o, on which another report on this case in 9 Edw. II.

has been carefully erased. It would seem that the case was adjourned from term to term until Michaelmas 9 Edw. II. when the plaintiff was non-suited. The erasure may have been made by some early owner of the manuscript who thought that the arguments used were better stated in the report of the first hearing than in that of the second.

been overlooked and a few errors made, so that some correction may be needed in a subsequent volume. A great effort, however, has been made to secure accuracy.

1 EDWARD II.—For this year we have reports in six manuscripts, namely *A*, *B*, *C*, *D*, *L* and *P*. Each of them contains twenty-eight cases, three being assigned to Michaelmas term, two to Hilary, thirteen to Easter and ten to Trinity; so that, compared with other years, the first year is poorly represented in our Year Books. An alternative report of a case of Trinity term appears in the first volume of our series, but it has been found in one manuscript only, and there occurs on a flyleaf.¹ With this exception it has not been found necessary to print alternative reports of any of the twenty-eight cases. The order of the cases is also the same in all the manuscripts, except that one case in *L* and two in *P* are misplaced,² and these two manuscripts are also peculiar in containing two brief notes³ after the tenth case of Trinity term. These are trifling differences, and we may infer that one version only of the reports of the first year circulated at all widely.

2 EDWARD II.—In this year we have reports not only in the six manuscripts mentioned above, but also in three others, namely *M*, *Q*, and *R*; and in *X* we have a useful collection of abridged reports. Unfortunately *M* and *Q* are defective; the reports in *M* begin in Easter term, and those in *Q* late in Hilary term. Now in these ten manuscripts the reports of the same case sometimes appear in alternative versions; and some manuscripts contain cases which are absent in others. Nevertheless the manuscripts, when considered with reference to the cases in this year, fall into two well-defined groups.

As the cases are divided into terms differently in the manuscripts our late Literary Director abandoned this division, and numbered the one hundred and fifty cases of this year consecutively without regard to terms. But for the purpose of our present investigation the division into terms must be steadily kept in view. In *A* fifty-six cases

¹ This is (5) on folio 20, which also contains one extra report (7). For (1), (3) and (4) see footnotes on pp. 4, 6 and 10 of vol. i.:—

20 r^o. (1) Case 2 of Michaelmas, 1 Edward II. (i. 4).
 (2) An unprinted record of a *quare impedit*, also occurring in *R* (folio 11 v^o) among the reports of Michaelmas, 3 Edward II.
 (3) Case 1 of Hilary,

1 Edward II. (i. 6),
 20 v^o. (4) Case 2 of Hilary, 1 Edward II. (i. 10).
 (5) Case 1b of Trinity, 1 Edward II. (i. 29).
 (6) Case 16a of 2 Edward II. (i. 65).
 (7) Case 14 of Easter, 1 Edward II. (i. 25).

² The order of the first five cases in *L* is 1, 5, 2, 3, 4, and in *P* 1, 5, 3, 2, 4.

³ These two notes are printed in Appendix II. to this volume.

are assigned to Michaelmas term, and they are printed in the order in which they occur in the manuscript, except that 40 is placed in the manuscript after 51. In *B* and *D* the text, and the order of the cases, is as in the printed book except that in *D* 39 occurs between 37 and 38. Five of the fifty-six cases in these manuscripts—namely 2, 16, 20, 23, 51—are printed with the letters *a* after their distinguishing numbers, as different versions of them are found in other manuscripts.

In Hilary term of this year *A* contains seventeen cases, of which the last, a brief variant of 20 *a*, has not been printed. The remainder, numbered 57–72, occur in the same order as in the printed book. In *B* and *D* the same sixteen cases occur in this order, except that in *D* 72 has been transferred to the following term. In this term there are no variant reports.

In Easter term *A* has twenty-four cases, numbered from 73 to 96. Four of these—namely 74, 76, 77, and 78—have variant reports in some of the other manuscripts. In *B* and *D* the text of the twenty-four cases is the same as in *A*. In *B* they occur in the order in which they are printed; but in *D* 89 follows 84, 93 follows 90, and 72, which was omitted in the preceding term, is inserted after 96. Three short notes follow 72 in this manuscript. The first is the version of 20 mentioned above, which occurs at the end of Hilary term in *A*; the second and third are 118 and 119 of the printed book. They are here inserted in a column which had been left blank in order that the reports of the next term might begin on a new folio.

In Trinity term *A* has twenty-three cases, numbered from 97 to 119, ten of which appear in different versions in other manuscripts—namely 97–99, 101–104, 106, 114, 117. In *D* the text of twenty-one of these cases agrees with *A* and the order is the same, but 118 and 119 occur, as already explained, at the end of the reports of Easter term.

The reports of the second group—namely *C*, *L*, *M*, *P*, *Q*, *R*, and *X*—are less clearly related to one another than those of the first, but the relationship between some of them is closer than between others. The following are the numbers of the cases of the four terms as they are found in *C*, *P*, and *Q* respectively :

<i>C</i>		<i>P</i>		<i>Q</i>
		MICHAELMAS.		
<i>Folio.</i>	<i>Case.</i>	<i>Folio.</i>	<i>Case.</i>	<i>Folio.</i> <i>Case.</i>
44 v ^o	27	12 v ^o	43, 44, 46, 50	
45 r ^o	28	13 r ^o	48 <i>note</i> , 31 <i>note</i> ,	[<i>incomplete</i>]
v ^o	29, 50		36, <i>unprinted</i>	
46 r ^o	33, 40, 43		<i>note</i> , 27, 28	

<i>Folio. Case.</i>	<i>C</i>	<i>Folio. Case.</i>	<i>P</i>
46 v ^o	44, 46, 48 <i>note</i> , 31 <i>note</i> , ¹ 36, <i>un-</i> <i>printed note</i> , ¹ 135	13 v ^o	29, 33, 37 (<i>ab-</i> <i>ridged</i>), 40, 135
47 r ^o	54, 55	14 r ^o	54, 55
v ^o	30, 38	v ^o	30, 38, 2b
48 r ^o	32, 2a (<i>erased</i>), 3 (<i>record</i>)	15 r ^o	3, 4 (<i>record</i>), 142 (<i>record</i>), 143
v ^o	4 (<i>record</i>), ² 142 (<i>record</i>)	v ^o	<i>Appendix</i> (case 22), 5, 49
49 r ^o	143, <i>Appendix to</i> <i>vol. ii</i> (case 22), 5	16 r ^o	<i>Appendix</i> (case i2), 41, 74b, 1, 6
v ^o	49, <i>Appendix</i> (case 12), 41	v ^o	51b, 4, 31, <i>Appen-</i> <i>dix</i> (case 13), 8, (<i>Appendix</i> (case 14)
50 r ^o	74b, 1, 6	17 r ^o	56, <i>Appendix</i> cases 15, 16, 17), 15, <i>Ap-</i> <i>pendix</i> (case 18), 128b.
v ^o	51b, <i>unprinted</i> <i>case</i> ³		
51 r ^o	4, 31, <i>Appendix</i> (case 13), 8, <i>Appendix</i> (case 14), <i>unprinted</i> <i>note</i> , ⁴ 56		
v ^o	<i>Appendix</i> (case 15), 74b (<i>re-</i> <i>peated</i>), <i>Appen-</i> <i>dix</i> (case 16), <i>Appendix</i> (case 17), 15, <i>Appen-</i> <i>dix</i> (case 18)		

HILARY.

52 r ^o	150 (<i>record</i>)	18 r ^o	150 (<i>record</i>)
v ^o	12, 9	v ^o	144, 12, 136, <i>Ap-</i> <i>pendix</i> (case 20) ⁵
53 r ^o	10, 13, 148		
v ^o	145, 14		

¹ The text of this note in *C* is as follows:

Nota. Le baroun ne purra my receyvre homage en absence sa femme des tenementz qe sunt del dreit sa femme ne soul respoudre dez tenementz qe sunt del dreit sa femme.

² The identification of this case is doubtful.

³ This is printed in Appendix ii.,

p. ciii below.

⁴ The text of this note in *C* is as follows:

En un bref de forme de doun le tenant demaunda la vewe dez tenementz lessez a ly par l'auncestre le demaundaunt.

Hervy. Vostre auncestre ne murust pas seisi, par quei eit la vewe.

⁵ See note 1 on next page.

<i>C</i>		<i>P</i>		<i>Q</i>	
<i>Folio.</i>	<i>Case.</i>	<i>Folio.</i>	<i>Case.</i>	<i>Folio.</i>	<i>Case.</i>
54 r ^o	146, 141	19 r ^o	137, 10, 13, 9,	2 r ^o	141, 70, 7, 138,
v ^o			<i>Appendix</i> (case		11, 16 <i>a</i>
55 r ^o	70, 7, 138, 11,		19) ¹	v ^o	16 <i>b</i> (<i>record</i>)
	16 <i>a</i>	v ^o	148, 145, 14	3 r ^o	20 <i>b</i>
v ^o	16 <i>b</i> (<i>recorā</i>)	20 r ^o	146, 141		
56 r ^o	20 <i>b</i>	v ^o	70, 7, 138, 11,		
			139, 140, 16 <i>a</i>		
		21 r ^o	16 <i>b</i>		
		v ^o	<i>Appendix</i> (case		
			21)		
		EASTER.			
56 r ^o	120, 18	22 r ^o	20 <i>b</i> , 78 <i>b</i> , 120, 21	3 r ^o	120, 18, 76 <i>b</i>
v ^o	76 <i>b</i> , 122 <i>a</i>	v ^o	18, 121, 76 <i>b</i> , 122 <i>a</i>	v ^o	122 <i>a</i> , 78 <i>b</i> , 21
57 r ^o	78 <i>b</i> , 21	23 r ^o	77 <i>b</i> , 123, 124	4 r ^o	77 <i>b</i> , 123, 124, 17
v ^o	77 <i>b</i> , 123	v ^o	149, 17, 125, 105	v ^o	128 <i>b</i>
58 r ^o	124, 128 <i>b</i>		(<i>an unprinted</i>	5 r ^o	19
v ^o			<i>note</i>), 126, 19,		
59 r ^o			127		
v ^o	19				
		TRINITY.			
60 r ^o	105 <i>a</i>	24 r ^o	105 <i>a</i> , 128 <i>a</i>	5 v ^o	105 <i>a</i>
v ^o	99 <i>b</i> , 129 ²	v ^o	98 <i>b</i>	6 r ^o	99 <i>b</i> , 129 ²
61 r ^o	22, 2 <i>b</i>	25 r ^o	129	v ^o	22, 2 <i>b</i>
v ^o	23 <i>a</i>	v ^o	99 <i>b</i> , ² 100	7 r ^o	23 <i>a</i> , 130, 24, 132
62 r ^o	130, 24, 132	26 r ^o	101 <i>b</i> , 102 <i>a</i> , 103 <i>a</i>	v ^o	106 <i>a</i> , 100, 101 <i>b</i> ,
v ^o	106 <i>a</i> , ³ 100, 101 <i>b</i>	v ^o	104 <i>a</i> , 106 <i>a</i> , 107,		112 <i>b</i> , 114 <i>b</i>
63 r ^o	112 <i>b</i> , 114 <i>b</i>		108, 109, 110,	8 r ^o	
v ^o			112 <i>b</i> , 113	v ^o	133 <i>a</i> , 98 <i>b</i>
64 r ^o	133 <i>a</i>	27 r ^o	117 <i>a</i> , 114 <i>b</i>	9 r ^o	
v ^o	98 <i>b</i>	v ^o	<i>Appendix</i> (cases	v ^o	97 <i>b</i>
65 r ^o			1 and 2)	10 r ^o	134
v ^o	97 <i>b</i>	28 r ^o	<i>Appendix</i> (cases	v ^o	25
66 r ^o	134		3, 6, 4)		
v ^o		v ^o	<i>Appendix</i> (cases		
67 r ^o	25		5, 10, 9, 7, 8,		
			11), 129 (<i>a</i>		
			<i>second report</i>)		
		29 r ^o	22, 2 <i>b</i>		
		v ^o	130, 24, 132, 25		
		30 r ^o	97 <i>b</i> , 134		

¹ Cases 19 and 20 in the Appendix are written in a later hand in the lower margin.

² Case 129 is probably another version of 99. The words 'melius infra

codem termino' are written in the margin of 129 in *P*.

³ The report in *C* and *Q* of case 106 is rather different from that in *P*, and in some respects resembles 106*b*.

These three lists obviously agree very closely in contents and generally in arrangement, though *P* has many more cases than *C*. The chief differences may be briefly noted. In Michaelmas term two cases (one a report of case 4, the other an unprinted case¹ of *ael*) occur in *C* and not *P*; case 32 is represented by a brief note in *C* and is altogether absent in *P*; and in *C* the second report of case 74 is repeated on folio 510° in almost the same words as on folio 502°. On the other hand, case 128*b* occurs in this term in *P*, but in Easter term in *C*. The reports of this term in *Q* have unfortunately disappeared.

For Hilary term *P* has eight more cases than *C*—136, 137, 139, 140, 144, and the three cases 19, 20, and 21 printed in the appendix to the second volume of this series. All these cases are short, and none of them are important. In *Q*, which is defective at the beginning, the reports, as far as they go, are in complete agreement with *C*. Both manuscripts include case 20 in this term; but in *P* it is assigned to Easter.

For Easter term *P* has six more cases than *C*—17, 121, 125, 126, 127, 149—all of them short notes, but 128*b*, which occurs in *C*, is missing in *P*, having been placed in that manuscript, as already mentioned, amongst the cases of Michaelmas term. In *Q* the cases are once again in complete agreement with *C*, except that 17 is not missing.

Finally, in Trinity term *C* and *Q* contain case 23 which *P* lacks, but on the other hand several cases appear in *P* and not in *C* and *Q*—namely 102, 104, 107–110, 113, 117, and a second report of 128, together with cases 1–11 in the appendix at the end of the second volume of this series. As in the three earlier terms most of these additional cases in *P* are notes rather than reports. For convenience of reference the numbers of the cases in these three manuscripts may be here noted in the order in which they are printed.

C: 1–16, 18–25, 27–33, 35, 36, 38, 40, 41, 43, 44, 46, 48–51, 54–56, 70, 74, 76–78, 97–101, 105, 106, 112, 114, 120, 122–124, 128–130, 132–135, 138, 141–143, 145, 146, 148, 150.

P: 1–22, 24, 25, 27–31, 33, 36–38, 40, 41, 43, 44, 46, 48–51, 54–56, 70, 74, 76–78, 97–110, 112–114, 117, 120–130, 132–146, 148–150.

Q: 2, 7, 11, 16–25, 70, 76–78, 97–101, 105, 106, 112–114, 120, 122–124, 128–130, 132–134, 138–141.

The facts narrated above suggest that in spite of some slight difference of arrangement, *C*, *P*, and *Q* are ultimately derived from the same

¹ This case is printed in Appendix ii., p. ciii below.

text, that some additional matter has been introduced into *P* or one of its intermediate texts, and that in the course of transmission a few cases have disappeared from each of the three manuscripts just discussed. This view of the text is confirmed by the contents of *X*. Its cases, though abridged, can easily be identified, and are found to occur in the following order :

MICHAELMAS.

<i>Folio.</i>	<i>Cases.</i>
1.	27, 28, 29, 33, 40, 43, 44, 46.
2.	50, 31, 135, 54, 55, <i>a note</i> .

HILARY.

2. 150 (*abridged report*), 12.
3. 10, 13, 9, 144 (*abridged report*), 136, 137, 148, 145, 14, 102*b*,
a note.¹
4. 146, 141, 70, 7, 138, 11, 16*a*.

EASTER.

5. 20*b*, 120, 18, 121, 76*b*, 122*a*, 123, 124, 78*b*, 21 (*twice noted*).
6. 77*b*, 17, 125, 128*b*, 99*b*, 129.

TRINITY.

6. 2*a*.
7. 105, 117*a*, 130, 131*a*, 24, 132, 106*b*, 100, 101, 112 *note*.
8. 114, 133, 98, 102*b*.
9. 97*b*, 134, 25.

In Michaelmas term these cases are abridgements of the early cases in *C*, and occur in nearly the same order. Similarly the cases for Hilary, Easter and Trinity terms are in general agreement in point of order sometimes with those in *C* and *Q*, and sometimes with those in *P*; but many cases which occur in these manuscripts are not found in *X*. An interesting feature of *X* is that cases 144 and 150 appear as Latin records in *P*, but as abridged reports in *X*. It would seem that the compiler of the latter manuscript in making his abridgement has changed the language. Perhaps the most striking feature of the abridged reports for this year is the fact that though they correspond closely with the reports in *C* and *P* they contain no abridgements of the later cases of Michaelmas term—that is to say, of Nos. 30 to case 18 of the appendix, taken in the order in which they occur in these manuscripts. This disagreement, however, is exceptional.

¹ This is a brief note written in a later hand in the lower margin.

When we find four manuscripts with reports or abridgements of the year 2 Edward II. agreeing with one another so closely as *C*, *P*, *Q*, and *X*, we may infer that they represent one original text of the reports of that year with no small circulation.

Three other manuscripts remain for consideration—*L*, *M*, and *R*. For Michaelmas term 2 Edward II. the early reports in *L* agree generally both as regards text and order with those in *C*, but the later reports in *C*, that is to say, 30 to case 18 of the appendix, are missing in *L*. It will be remembered that these reports were also missing in *X*. For Hilary term *L* has no report of 12 and 141, which occur in *C* and *P*, but it contains 136, 137, 139, and 140, which occur in *P* but not in *C*. In Easter term 21 which occurs in *C* and *P* and 17 which occurs in *P* are both missing in *L*, and in Trinity term *L* lacks 138 which occurs in *C* and *P*. On the other hand, 115, 116, 118 and 119 occur in *L* and in none of the other manuscripts. The following is the order in which the cases occur in *L*:

MICHAELMAS.

<i>Folio.</i>	<i>Case.</i>	<i>Folio.</i>	<i>Case.</i>
5 v ^o	43, 44, 46	6 v ^o	29, 33, 37, 40,
6 r ^o	48 <i>note</i> , 31, 36,		135
	<i>an unprinted</i>	7 r ^o	54, 55
	<i>note</i> , ¹ 27, 28		

HILARY.

<i>Folio.</i>	<i>Case.</i>	<i>Folio.</i>	<i>Case.</i>	<i>Folio.</i>	<i>Case.</i>
7 v ^o	150 (<i>record</i>)	8 v ^o	9, 148, 145, 14	9 v ^o	16a, 16b
8 r ^o	144 (<i>record</i>), 136,	9 r ^o	146, 147, 70, 7,		
	137, 10, 13		138, 139, 140,		
			11		

EASTER.

<i>Folio.</i>	<i>Case.</i>	<i>Folio.</i>	<i>Case.</i>
10 r ^o	20b, 78b, 120	11 r ^o	123, 124, 149, 17,
v ^o	18, 121, 76b,		125, 126, 19
	122a, 77b	v ^o	127

TRINITY.

<i>Folio.</i>	<i>Case.</i>	<i>Folio.</i>	<i>Case.</i>	<i>Folio.</i>	<i>Case.</i>
11 v ^o	127, 128a	13 v ^o	104a, 106a, 107,	15 v ^o	115, 116
12 r ^o	105a, 98		108	15 r ^o	118, 119
v ^o	129, 100	14 r ^o	109, 110, 111,		
13 r ^o	99a, 101a, 102,		112, 113, 117a,		
	103a		114a		

¹ This is note 1 on p. lxxi above.

In the order in which they are printed these cases may be arranged as follows :

7, 9-11, 13, 14, 16-18, 27-29, 31, 33, 36, 39, 43, 44, 46, 48, 70, 76-78, 98-129, 135-140, 144-150.

L obviously belongs to the same group as *C* and *P*, but it contains fewer cases. This is largely due to the absence of the later cases of Michaelmas term which has already been noticed.

In *M* we unfortunately have reports of Easter and Trinity terms only. They include cases 102, 117, and the short notes 121, 125, 126, 127 which occur in *P* but not in *C*, and 23 which occurs in *C* but not in *P*. All the other cases in *M* which belong to this year (except 131) occur in both *C* and *P*; but 103 and 104 and second versions of 23 and 106, which are printed in our series as in 2 Edward II., are attributed in *M* to Michaelmas term 3 Edward II.¹ The following are the particulars of the cases in *M* for 2 Edward II. :

EASTER.

<i>Folio.</i>	<i>Case.</i>	<i>Folio.</i>	<i>Case.</i>	<i>Folio.</i>	<i>Case.</i>
9 r ^o	20 <i>b</i> , 120, 18, 121,	10 r ^o	21, 77 <i>b</i> , 125, 126,	11 r ^o	99 <i>b</i> , 129
	76 <i>b</i>		127, 128 <i>b</i>	v ^o	22
v ^o	122 <i>a</i> , 123, 124, 78 <i>b</i>	v ^o			

TRINITY.

<i>Folio.</i>	<i>Case.</i>	<i>Folio.</i>	<i>Case.</i>	<i>Folio.</i>	<i>Case.</i>
11 v ^o	2 <i>b</i> , 105 <i>a</i>	12 v ^o	106 <i>b</i> , 100, 101 <i>b</i> ,	14 r ^o	102 <i>b</i> , 97 <i>b</i>
12 r ^o	23 <i>a</i> , 117 <i>b</i> , 130,		112 <i>note</i> , 114 <i>b</i>	v ^o	134
	131 <i>b</i> , 24, 132	13 r ^o		15 r ^o	25
		v ^o	133 <i>a</i> , 98 <i>b</i>		

In the order in which these cases are printed they are :

2, 18, 20-25, 76-78, 97-102, 105, 106, 112, 114, 117, 120-134.

Thus, although we have only two terms of 2 Edward II. in *M*, we may be pretty sure that the text of its cases for this year is derived from the same source as *C* and *P*.

The cases in *R* for this year are assigned partly to Michaelmas and partly to Hilary term, no cases being assigned to the two following terms. As, however, a large number of them are differently dated in other manuscripts, the headlines in *R* are probably incorrect. The order of the cases is as follows :

¹ Cases 102, 103, 121, 125-127 are also found in *L*.

MICHAELMAS.

<i>Folio.</i>	<i>Case.</i>	<i>Folio.</i>	<i>Case.</i>	<i>Folio.</i>	<i>Case.</i>
1 r ^o	27, 28, 29,	2 r ^o	31, ¹ 36 <i>unprinted</i>	3 r ^o	136, 10, 9, 13
v ^o	40, 43, 44, 46,		<i>note,</i> ² 135, 55	v ^o	70
	50	v ^o	12		

HILARY.

<i>Folio.</i>	<i>Case.</i>	<i>Folio.</i>	<i>Case.</i>	<i>Folio.</i>	<i>Case.</i>
3 v ^o	14	5 v ^o	122 <i>a</i> , 77 <i>b</i>	7 v ^o	129, 2 <i>b</i>
4 r ^o	141, 138	6 r ^o	123, 124, 17, 125,	8 r ^o	112, 114 <i>b</i>
v ^o	139, 11, 20 <i>b</i> , 16 <i>b</i>		126, 19	v ^o	104 <i>b</i>
	(<i>record</i>)	v ^o	128 <i>b</i>	9 r ^o	23 <i>b</i> , 106 <i>b</i>
5 r ^o	78 <i>b</i> , 120, 21	7 r ^o		v ^o	98 <i>a</i>

If we arrange these cases in the order in which they are printed, we have :

2, 9-14, 16, 17, 19-21, 23, 27-29, 31, 36, 40, 43, 44, 46, 50, 55, 70, 77, 78, 98, 104, 106, 112, 114, 120, 122-126, 128, 129, 135, 136, 138, 139, 141.

Cases 31, 49, and 133,³ which are printed in this edition in 2 Edward II., are attributed in *R* to 3 Edward II.

It is impossible within the limits of this introduction to discuss the arrangement of these cases. It is sufficient to notice that *R* like *L* contains fewer cases than *C* and *P*, but for this year it bears a general resemblance to these manuscripts alike as regards contents, order, and text.

At first sight it might appear that the original versions of our two groups of texts were the work of two different men. Further investigation, however, seems to point to the conclusion that they had a common origin. Let us begin with Michaelmas term. The first group gives fifty-six cases, some of which are mere notes. Now thirty-four out of the first thirty-five of these cases all appear either in *C* or in *P*, and with a few exceptions they appear both in *C* and *P*. Of the remaining twenty-one cases, Nos. 34, 39, 42, 45, 47, 52 and 53 occur in neither *C* nor *P*, while the rest appear in one or other of these manuscripts. Five, however, of the omitted cases—namely 34, 39, 42, 52, and 53—are mere notes of little consequence, and are possibly accretions to the original text of the reports. On the other

¹ This is a brief note. A fuller report is found on folio 12 r^o.

² For the text of this note see p. lxxi note 1 above.

³ The version of 133 which occurs in *R* is not found in any of the other manuscripts.

hand, Nos. 42 and 45, which are longer cases, may have been accidentally omitted from some early copy of the reports through which our texts of the second group are derived.

In Hilary term there are sixteen cases, numbered 57–72 in our first group, and of these one only—No. 70—occurs in the second group. This is a short note in the first group, and in the second group it is reduced to about one-third of its length. In Easter term the first group contains twenty-four cases in all, which are numbered 73–96, and four only of these appear in the second group. Finally, we come to the twenty-three cases numbered 97–119, which the first group ascribes to Trinity term. With the exception of case 111, which is a very short note, the first eighteen of these cases occur in *P*. The five remaining cases (115–119) are found in *L*, the text of which belongs to our second group, and one of these five also occurs in *P* and *M*.

Now when we find that out of thirty-five consecutive cases in our first group, thirty-three appear in *C* and thirty in *P*, and that fourteen out of the remaining twenty-one appear both in *C* and *P*, which are the principal manuscripts of our second group, we can scarcely doubt that the compiler of the original version of the second group had before him a text (though possibly an imperfect text) of the first group. Again, when we find that of the sixteen cases of Hilary term in the first group one only occurs in the principal manuscripts of the second group, we may strongly suspect that its compiler was unable to procure a text of the first group and that he obtained the one case which occurs in both groups (but in the second as an insignificant note) from some other source. In Easter term four only of the twenty-four cases of the first group appear in the second group—namely 74, 76–78. Here again we may suspect that the compiler of the second group had before him a text of the first group in which all save the first four or five cases of this term were missing owing to the loss of some of its folios. Lastly, out of the twenty-three cases of Trinity term occurring in the first group the first fourteen also occur in *P*, the fifteenth is an insignificant note, and the next three occur in this manuscript. In this term, as in Michaelmas term, it is hardly possible to doubt that the compiler of the original version of the second group had before him a good text of the first group.

These facts point strongly to the second group having been derived from the first group. It contains, however, a considerable number of additional cases,¹ some of which are substantial and not mere notes.

¹ Of the thirty-one additional cases only, and another (147) in *L* only. In (120–150) one (131) occurs in *M* and *X* *P* cases 128, 135, 142 and 143 are attri-

They may have been the additions of the original compiler of the second group, who had himself made a few reports of cases which interested him. They may even have been reports which were supplied by the direction of the original reporter of the first group, and rejected by him as unsatisfactory. Whatever may be the explanation of this additional matter, there can be little doubt that the first group represents the older version. Its three manuscripts are in far closer agreement with one another than any two of the manuscripts of the second group; and it is impossible to avoid noticing that many of the cases of the latter group are attributed in different manuscripts to different terms. They seem to have been derived from a pamphlet which was much copied and much altered.

3 EDWARD II.—In this year we are able to use three new manuscripts, *G*, *S*, *T*, of which *G* and *T* are obviously imperfect. *G* begins with Hilary term, and *T* has seventeen cases only of Michaelmas term. *S* contains cases of all four terms; but they are improperly divided, and Easter and Trinity terms have no headings.

For Michaelmas term the cases in *A* are arranged as follows:

1-34,¹ 104*b* (of 2 Edward II.), 35, 106*b* (of 2 Edward II.), 10*b*
36, 37, 49, 50-53, 41, 54, 55.

Cases 1, 4, 6, 10, 23, 31, 41 and 55 are distinguished in this edition by the addition of the letter *a*, as different versions of them appear in other manuscripts. Case 10, however, appears in *A* in two forms, which are designated as 10*a* and 10*b*. The order of the cases of this term is precisely the same in *D* as in *A*, and the text of these manuscripts is also in close agreement. But an important difference between the reports of the second year and those of the third year now becomes apparent. In the second year *A*, *D*, and *B* agreed in text and in order of cases, but in the other manuscripts, including *C* and *Q*, different versions of several cases were noticed, and the order was decidedly different. In 3 Edward II., however, *C* and *Q* are, as will be seen from the following particulars, in substantial agreement with *A* and *D*. In *C* the order of the cases is

2-5, 8-10, 12-22, 24-34, 104*b* (of 2 Edward II.), 35, 106*b*
(of 2 Edward II.), 10*b*, 36, 37, 7, 49, 11, 52, 53, 50, 51, 1, 41,
54, 55.

buted to Michaelmas term, 136-141, 144-146, 148 and 150 to Hilary, 120-127, 149 to Easter, and 129, 130, 133, 134 to Trinity. In *C* 128 is attributed to Michaelmas, 121, 125-127, 136, 137, 139, 140, 144 and 149 are missing, and therest are attributed to the same terms

as in *P*. It will be noticed that twenty out of the twenty-nine additional cases in *P* are attributed to Hilary and Easter terms, in which that manuscript has five cases only which occur in *A*.

¹ Case 20*a* of 2 Edward II. is inserted after 31 in *A* and *D*.

In *Q* it is

1-3, 4 (*part*), 2 (*a second report*), 3 (*a second report*), 4 (*residue*),
5, 8-10, 12-28, 30, 29, 31-34, 104*b* (of 2 Edward II.), 35, 106*b*
(of 2 Edward II.), 10*b*, 36, 37, 7, 49, 11, 50-53, 41, 54, 55.

The chief features of interest in these lists are that 10*b* precedes 36 in *A*, *C*, and *Q*, that 41 comes between 53 and 54 in *A* and *Q*, and that 7 and 11 occur in precisely the same place towards the end of the lists in both *C* and *Q*. On the other hand 1 is placed almost at the end in *C* but not in *Q*, and there are some peculiarities of text and arrangement in 2, 3 and 4 in *C*. In spite, however, of a few slight differences, there can be no doubt that the reports of this term in *A*, *C*, *D*, and *Q* are derived from the same source.

The cases in Hilary term of this year are arranged thus in *A* :

1-13, 35*c*, 14, 15, 17-20, 16, 21-29,¹ 14*b*.

Of these 7, 9, 10, 14-20, 27 are designated by the addition of the letter *a*, 21 by the addition of *b*, and 35 by the addition of *c*, as variants of them occur in other manuscripts. Moreover, two versions of 14 occur in *A*, which are distinguished as 14*a* and 14*b* respectively.

In *C*, *D* and *Q* the order is much the same as in *A*, and the texts of these three manuscripts also agree with that in *A*. The order of the cases is as follows :

C. 1-11, 13, 35*c*, 14, 15, 17-20, 16, 21-29, 14*b*.

D. 1-13, 35*c*, 14, 15, 17-20, 16, 21, 22-29, 14*b*.

Q. 1-12, 35*c*, 14, 15, 17-20, 16, 21, 22, 24-29.

The absence from *Q* of the second version of 14, which occurs as the last case in *A*, *C*, and *D*, is interesting. It would seem that one version only occurred in the earliest copies of these reports, and that 14*b* was inserted as a postscript in a blank space at the end of the term in some later copy from which *A*, *C* and *D* were derived.

In *A* thirteen cases are assigned to Easter term which occur in the order in which they are printed in this edition. Eight of them—namely 1, 3, 4, 6, 7, 8, 10, 13—having variant reports in other manuscripts, are designated respectively by the addition of the letter *a*. These thirteen cases also occur in the same order in *C* and *D*, together with 15, which is not found in *A*, but is placed in *C* between 3 and 4. Owing to the loss of several folios *Q* contains no reports of this and the following term.

In Trinity term *A* has eleven cases which occur in the order in which they are printed in this edition. Four of them, having variants in other manuscripts, are distinguished as 2*b*, 3*a*, 4*a* and 9*a* respectively. The text and order of the cases in this term in *C* and *D* are the same as in *A*.

In the third year we have our earliest reports in *T*, which, owing

¹ Cases 1 to 21 are ascribed to Michaelmas term in *A*.

to the loss of a few folios, begins abruptly in the course of Michaelmas term. For this and Hilary term the order of the cases in *T* is different from that in *A*, *C*, *D*, and *Q*, and many cases occur in *T* which are not found in those four manuscripts. For the moment it need only be noticed that the last four cases assigned to Hilary term in *T* are 1, 2, 3 and 13 of Trinity term. In Easter term, however, the difference between *T* on the one hand and *A*, *C*, *D* and *Q* ceases, and the text of *T* becomes almost the same as that of *C*, except that 13 is missing. This is probably because the misplaced report of it occurs among the cases of the preceding Hilary term. In Trinity the text agrees with *A*, *C* and *D*, except that the first three cases of this term are here missing, having been, as already mentioned, misplaced and assigned to Hilary term. This change in the text of *T* from complete disagreement to close agreement with that of *A*, *C* and *D* strongly supports the 'pamphlet' theory of the Year Books. The change on this theory is due to the compiler using one pamphlet which ended with Hilary term 3 Edward II., and then another pamphlet containing reports of the two following terms which was the same as that used by the compiler of *A*, *C* and *D*.

We may now return to the reports in *T* for Michaelmas and Hilary terms. The early cases of the former term are unfortunately missing in *T*; but the seventeen cases which have been preserved agree closely with the reports in *S*. The contents of the two manuscripts as regards this term may therefore be conveniently studied together.

MICHAELMAS.

<i>S</i>	<i>T</i>
33 r ^o 1a, 2, 3	1 r ^o 33, 34, 104b (of 2 Edward II.),
v ^o 4a, 6a, 7, 5, 8	23b (of 2 Edward II.), 35,
34 r ^o 9, 10a, 11, 12	106b (of 2 Edward II.), 45,
v ^o 38, 13, 14	103b (of 2 Edward II.), 46
35 r ^o 15, 16, 17	v ^o 55b, 31b, 6b, 10b, 47, 26, 37,
v ^o 18, 19, (<i>an unprinted case</i>) ¹	48
36 r ^o 49 (of 2 Edward II.), 47 (of 2 Edward II.), 50 (of 2 Edward II.), 31 (of 2 Edward II.), 20, 23b	
v ^o 21, 40, 41b, 42, 43, 32, 44, 33	
37 r ^o 34, 104b (of 2 Edward II.), 23b (of 2 Edward II.), 35, 106b (of 2 Edward II.)	
v ^o 45, 103b (of 2 Edward II.), 46, 55b, 31b, 6b	
38 r ^o 10b, 47, 26, 37, 48	

¹ *Howe v. Howe*, a case of ael heard in the last Norfolk eyre.

In both manuscripts 49 of Michaelmas term is assigned to Hilary term and there appears as the first case. For convenience of reference these cases in *S* (including 49) may be arranged in the order in which they are printed in this edition :

23, 31, 47, 49, 50, 103, 104 and 106 (all of 2 Edward II.)
and 1-21, 23, 26, 31-35, 37, 38, 40-49, 55.

Eight of these cases, namely 40, 42-48, are not found in *A* ; but on the other hand twelve cases, namely 22, 24, 25, 27-30 and 50-54, which occur in *A*, are not found in *S*.¹ This leaves thirty-one Michaelmas cases which are common to *A* and *S*—namely 1-21, 23, 26, 31-35, 37, 49, 55—and also two cases of the year 3 Edward II., namely 104 and 106. Of the eight cases in *A* of which different versions occur in other manuscripts four—namely 1, 4, 6 and 10—appear in the same versions in *A* and *S*, and the other four—namely 23, 31, 41 and 55—appear in different versions. As regards the order of the cases there is some similarity between *A* and *S* during the greater part of the term, but towards the end the similarity ceases. In spite, however, of the absence of twelve cases from *S* which occur in *A*, and the insertion in the former manuscript of eight cases which are not found in the latter, it is far from improbable that in both manuscripts the reports of this term are ultimately derived from a common original. The compilers of *A* and *S* may have used different editions (in pamphlet form) of the reports of this term, each of which lacked certain of the cases of the original compiler. It is also possible that some of the cases which are found in one of these manuscripts and not in the other are accretions to the original text.

In both *S* and *T* the cases assigned to Hilary term include not only seventeen cases which belong to Easter and six to Trinity terms but also eleven cases which are printed as undated cases in the fourth volume of this series. They occur in the following order, the undated cases being distinguished in this edition by the addition of the word *Extra*.

<i>S</i>		<i>T</i>	
38 v ^o	49 <i>Mich.</i> , 21c	2 r ^o	49 <i>Mich.</i> , 21c
39 r ^o	24 <i>Easter</i>	v ^o	24 <i>Easter</i> , 4
v ^o	4	3 r ^o	11 <i>Extra</i> , 10b, 11, 8
40 r ^o	11 <i>Extra</i> , 10b, 11, 8	v ^o	23, 9b, 31a, 15c
v ^o	23, 9b, 31a, 15c	4 r ^o	32a, 33, 24, 20b, 26, 27a, 12
41 r ^o	32a, 33, 24, 20b	v ^o	35a, 29, 19b
v ^o	26, 27a, 12, 35a	5 r ^o	1a <i>Extra</i> , 2 <i>Extra</i> , 1, 12
42 r ^o	29, 19b, 1a <i>Extra</i>		<i>Extra</i> , 13 <i>Extra</i> , 18a

¹ Nor are they found in any other manuscripts except *C*, *D*, and *Q*.

<i>S</i>		<i>T</i>	
42 v ^o	2 <i>Extra</i> , 1, 12 <i>Extra</i> 13 <i>Extra</i> , 18a	5 v ^o	3 <i>Extra</i> , 14b, 7b, 27a <i>Easter</i>
43 r ^o	3 <i>Extra</i> , 14b, 7b	6 r ^o	4a <i>Extra</i> , 49, 5a <i>Extra</i> , 42i <i>Easter</i> , 43c <i>Easter</i> , 12 <i>Easter</i>
v ^o	27a <i>Easter</i> , 4a <i>Extra</i> , 49c 5a <i>Extra</i> , 42i <i>Easter</i>	v ^o	44 <i>Easter</i> , 6 <i>Extra</i> , 10a <i>Easter</i> , 34a <i>Easter</i> , 47 <i>Easter</i>
44 r ^o	43c <i>Easter</i> , 12 <i>Easter</i> 44 <i>Easter</i> , 6 <i>Extra</i> 10a <i>Easter</i>	7 r ^o	4b <i>Easter</i> , 22b <i>Easter</i> , 45b <i>Easter</i> , 7 <i>Extra</i> , 8 <i>Extra</i> , 15 <i>Easter</i> , 9 <i>Extra</i> , 21b <i>Trinity</i> , 22 <i>Trinity</i> , 46 <i>Easter</i>
v ^o	34a <i>Easter</i> , 47 <i>Easter</i> 4b <i>Easter</i> , 22b <i>Easter</i> 45b <i>Easter</i> , 7 <i>Extra</i> , 8 <i>Extra</i> 15 <i>Easter</i>	v ^o	13a <i>Easter</i> , 38 <i>Easter</i> , 1 <i>Trinity</i> , 2b <i>Trinity</i> , 3a <i>Trinity</i>
45 r ^o	9 <i>Extra</i> , 21b <i>Trinity</i> , 22 <i>Trinity</i> , 46 <i>Easter</i> , 13a <i>Easter</i>	8 r ^o	13a <i>Trinity</i>
v ^o	38 <i>Easter</i> , 1 <i>Trinity</i> , 2b <i>Trinity</i> , 3a <i>Trinity</i> , 13a <i>Trinity</i>		

Arranged in the order in which these cases are printed in this edition they are :

HILARY. 1, 4, 7b, 8, 9b, 10b, 11 (*second part*), 12, 14b, 15c, 18a, 19b, 20b, 21c, 23, 24, 26, 27a, 29, 31a, 32a, 33, 35a.

EASTER. 4b, 10a, 12, 13a, 15, 22b, 24, 27a, 34a, 38, 42i, 43c, 44, 45b, 46, 47, 49c.

TRINITY. 1, 2b, 3a, 13a, 21b, 22.

EXTRA. 1-9, 11-13.

Thus any resemblance between *A* and *S* in the reports of Hilary term must be very faint. Of the thirty cases assigned to this term in the former manuscript twenty only are found in the latter; and nine of these twenty—namely 7, 9, 10, 11, 14, 15, 19-21—appear in different versions. Moreover, three cases—namely 31-33—occur in *S* which are not found in *A*.¹ It will be seen presently that *S* is less remotely related to *M*.

With case 13a (*Trinity*), the reports assigned to Hilary term in *T* cease, and the reports already mentioned, which are definitely assigned to Easter and Trinity terms, begin. In *S*, however, after 13a (*Trinity*) we have (1) an unprinted report of a formedon in remainder which is not found among the reports of this term in other manuscripts, (2) a report of a case on a writ of entry with the words 'anno xiiij' in the margin, and (3) four cases of Trinity term—namely 5, 6, 7, 8. Thus, although the compiler of *S* has definitely assigned no cases to Trinity term, he

¹ Case 30 occurs in *R* only.

has included in his collection ten cases of this term—namely 1-3, 5-8, 13, 21 and 22; and another case, namely 11, occurs among his reports of Michaelmas term 4 Edward II.

Seventeen cases of Easter term are included among the Hilary cases in *S* and *T*; but *T*, as already mentioned, also contains separate collections of reports for Easter and Trinity terms under their proper headings. Four only of these Easter cases in *S* appear in *A*—namely 4, 10, 12 and 13; and nine in *M*, cases 34 and 42-47 and 49 not appearing in the latter manuscript. The reports of this term in *S* are obviously not closely related, either as regards contents or order, to those in any of the other manuscripts. It is worthy of notice, however, that of the seventeen cases of this term in *S* and *T*, nine occur in *M* and *P*—namely 4, 10, 12, 13, 15, 22,¹ 24, 27 and 38—two, namely 34 and 49, occur in *L*, a manuscript closely related to *M* and *P*, and the six remaining cases, namely 42-47, which are missing in *M* and *P*, all occur in *R*.

The reports in *M* and *P* for this year are almost in complete agreement; and those in *L* differ from them but little. The cases of Michaelmas term in *M* are in the following order:

1*a*, 2, 3, 4*a*, 5, 6*a*, 7, 8, 9, 10*a*, 11, 12, 38, 13, 14, 15, 16, 17, 18, 19, 20, 23*b*, 39, 21, 40, 41*b*, 42, 43, 32, 44, 33, 34, 104*b* (of 2 Edward II.), 23*b* (of 2 Edward II.), 35, 106*b* (of 2 Edward II.), 45, 103*b* (of 2 Edward II.), 46, 55*b*, 31*b*, 6*b*, 10*b*, 47, 26, 37, 31 *record*, 48.

Arranged in the order in which they are printed in this edition (and including case 49 assigned to Hilary term) they are:

1-21, 23, 26, 31-35, 37-49, 55,
with
23, 103, 104, and 106 of 2 Edward II. and a second version of 6.

In *P* the order is exactly the same, except that 6*a* precedes 5 and that 17 is repeated between 26 and 37. In *L* the order is the same as in *P*, but the reports end with 19 and are followed by three brief notes which are printed in this edition as case 56. In *X* also the abridged cases of this term are in the same order as in *P*. Moreover, on referring back to the particulars of the reports in *S* we find that the reports in that manuscript agree with those in *P*, except that 39, an insignificant note, is omitted in *S* and that the second version of 10 and four cases of 2 Edward II. are omitted in *P*. For this term, therefore, the reports in *L*, *M*, *S*, *P*, *T* and *X* are no doubt derived from the same source.

¹ Case 22 is a mere note in *M* and *P*.

In *M* the cases assigned to Hilary term of this year are the following,
49 *Mich.*

4, 11 (*second part*), 8, 22, 23, 9*b*, 31*a*, 15*c*, 32*a*, 33, 24, 25, 34,
20*b*, 26, 27*a*, 28*ii*, 12, 26 *Easter*, 35*a*, 29, 21*c*, 18*b*, 14*b*.

This is also the order in *P* and *X*, except that in the latter manuscript the abridgements of the six cases which follow 15*c* are omitted. In *L* the first three cases are 49 *Mich.*, 10*b*, 23*i* *Extra*; but the remaining cases are in the same order as in *P* from 8 to 14*b*, except that the six cases which follow 15*c* are omitted, as in *X*. Four, however, of these six cases—namely 20*b*, 32*a*, 33, 34—are assigned to Easter term in *L*. Arranged in the order in which they are printed the cases in *M* for this term are the following :

49 *Mich.*

4, 8, 9, 11, 12, 14, 15, 18, 20–29, 31–35.

26 *Easter*.

The reports for this term in *M* and *P* no longer agree closely with those in *S* and *T*. Even if we exclude the intrusive Easter, Trinity and Extra cases which are a prominent feature of this term in *S* and *T*, we shall still have noteworthy differences. Cases 1, 7, 10 and 19 occur in *S* and *T*, but not in *M* and *P*; and 22, 25, 28 and 34 occur in *M* and *P*, but not in *S* and *T*. On the other hand, ten cases appear in both *M* and *S*, of which more than one version is printed in this edition. In nine of these cases—namely 9, 14, 15, 20, 21, 27, 31, 32, 35—the same version appears in both *M* and *S*, and it is only in case 18 that we have different versions. Moreover, in spite of some differences in their contents, there is a remarkable agreement in the order of the cases which *M* and *S* have in common. When we find seven consecutive cases—namely 23, 9, 31, 15, 32, 33, 24—occurring in precisely the same order, it is impossible to doubt that they have a common origin. Indeed, it may be taken as almost certain that, as in Michaelmas, so in Hilary term, *L*, *M*, *P*, *S*, and *T* are ultimately derived from the same source.

The reports of Easter term in *M* and *P* agree in text and order.

1*a*,¹ 2, 14, 3*a*, 15, 4*a*, 5, 16*a*, 18*i*, 19, 20, 21, 22*a*, 6*a*, 7*a*, 8*a*,
23, 9, 24, 25 *iii*, 26 (*repeated*), 10*a*, 27*b*, 35, 11, 12, 13*a*, 5 (*repeated*),
29, 9*c* *Trinity*, 28, 38.

Arranged in the order in which they are printed they are :

1–16, 18–29, 35,² 38.

The abridged cases in *X* are in the same order as the cases in *M* and *P*. In *L*, however, the reports of this term are no longer in close agreement with *M* and *P*. They occur in the following order :

¹ The first sixteen of these cases are attributed to Hilary term in *M*.

² Case 35 is a mere note in *M* and *P*.

2, 3*a*, 15, 4*a*, 5, 16*a*, 24, 25iii, 27*b*, 10*a*, 11, 12, 7*a*, 18*i*, 19 *note*, 22*a*, 20, 21, 42, 14, 32*a* *Hilary*, 33 *Hilary*, 34 *Hilary*, 20*b* *Hilary*, 14*a* *Extra*, 23iii *Extra*, 10 *Extra*, 43*b*, *unprinted note*, 17*a*, 16*b*, 15 *Extra*, 24 (iv and v) *Extra*, 16*a* *Extra*, 17 *Extra*, 49*b*, 33 *note* 1, 30*a*, 18 *Extra*, 23ii *Extra*, 6*b*, 19 *Extra*, 20 *Extra*, 13*a*, 21 *Extra*, 31, 33 *note* 2, 34*b*, 5*b* *Extra*, 8*b*, 48, 22 *Extra*, 32, 33.

Arranged in the order in which they are printed, they are :

HILARY. 20, 32–34.

EASTER. 2–8, 10–22, 24–27, 29–34, 42, 43, 48, 49*b*.

EXTRA. 5, 10, 14–23.

If, however, we exclude the Hilary and Extra cases, the difference between the reports of Easter term, in *L* on the one hand and *M* and *P* on the other hand, becomes less striking. Cases 1, 9, 23, 28, 38 occur in *M* but not in *L*. Possibly some of these omissions are due to carelessness ; but it should not be overlooked that owing to defects in the manuscript the reports of this term in *L* end in the middle of a case. On the other hand, ten cases—namely 17, 30–34,¹ 42, 43, 48, 49, and a second report of 16—occur in *L* and not in *M*. They mostly occur towards the end of the reports among the Extra cases, and not improbably, like them, they are accretions to the original text. Lastly, we may notice that though different versions of no less than twelve cases occurring in both *L* and *M*—namely 3, 4, 6, 7, 8, 10, 13, 16, 18, 22, 25, 27—are printed in this edition, the same versions of all of them, except cases 6, 8 and 16, appear in both manuscripts. It is therefore probable that in this term as in the two preceding terms the reports in *L* are derived from the same source as *M*, but the relationship between the two manuscripts is obviously somewhat remote.

The reports of this term in *L* differ from those in *S* much more than from those in *M*. There are thirty-four cases in *L* and seventeen in *S*. Of these twelve only are common to both manuscripts—namely 4, 10, 12, 13, 15, 22, 24, 27, 34, 42, 43 and 49—and six of them appear in different versions. It is, however, very remarkable that in both *L* and *S* a considerable number of Extra cases are interspersed among those of Easter term, eleven in *S* and twelve in *L* ; and that of these only one occurs in both manuscripts.

For Trinity term the cases in *M* and *P* are as follows :

1, 2*b*, 3*a*, 12, 4*a*, 13*a*, 5, 6, 7, 8, 2*a*, 14*a*, 9*a*, 15,² 10, 11, 17, 18, or, in the order in which they are printed, 1–15, 17, 18, with a second report of 2. In *L*, owing to the defect already mentioned, there are no

¹ Case 30 is a mere note in *L*. See also p. xciii below.

² The case of *Thorgrim* v. *Hereford*

which is printed in this edition among the Michaelmas cases of 4 Edward II. occurs here in these manuscripts.

reports for this term. In *X* the order of the abridged cases agrees with *M* and *P*.

These particulars suggest that the reports of the third year as they are found in *M* and *P* circulated as a pamphlet, and that a somewhat similar version of this pamphlet, perhaps an earlier one, perhaps a later one but with some variant texts and a considerable number of extra cases for Easter term, was used by the compiler of *L*. It is important to notice that the relation between *M* and *P* is closer in the third than in the second year.

We must now consider the relation between *A* and *M*. In Michaelmas term these manuscripts have thirty-two cases in common, and there are thirteen cases which occur in *A* but not in *M*, and ten which occur in *M* but not in *A*.¹ No doubt the proportion of the number of cases common to *A* and *M* to the total in either of these manuscripts is not very high; but, on the other hand, the fact that the first twenty-one cases in *A* occur also in *M*, and in the same version, makes it almost certain that the reports for this term in *A* and *M* had a common original.

In Hilary term *A* and *M* have nineteen cases in common. Eleven others occur in *A* but not in *M*, and four occur in *M* but not in *A*. No less than ten of the cases which are common to the two manuscripts are consecutive in *A*. It is therefore almost certain that in Hilary term, as in Michaelmas term, the reports in *A* and *M* had a common original.

In Easter term *A* has thirteen cases only, all of which appear in the same versions in *M*, but *M* contains sixteen more cases than *A*. It is obvious that as regards the first thirteen cases in *A* that manuscript and *M* had a common original, but whether the sixteen other cases which appear in *M* but not in *A* were also in the common original, and were omitted in some more recent copy from which the text in *A* is derived, must remain for the present uncertain. In Trinity term *A* has eleven cases only, all of which occur in the same versions in *M*, but *M* contains sixteen more cases than *A*. Here again there can be no doubt that the two manuscripts had a common original as regards the first eleven cases in *A*; but, as in Easter term, it is uncertain whether or not the common original contained the cases which appear in *M* but not in *A*.

The reports of this year in *R* are less numerous than in the other manuscripts; but, on the other hand, they are conspicuous for their individuality, no less than 22 out of a total of 46 appearing in versions which are not found elsewhere. Such individuality is the more remarkable, as it is not a feature of the reports of the second and fourth

¹ See pp. lxxix and lxxx above. Cases of 2 Edward II. are excluded from these particulars.

years in this manuscript ; but comment on it, owing to lack of material, must be reserved until more of the Year Books of Edward II. have been published in this edition. In Michaelmas term there are eight cases of this term—namely 1–5, 12, 13, 15 ; two others which are printed among the cases of 2 Edward II., namely 31 and 49 ; a brief note, and the record of a *quare impedit*. These occur in the following order :

- 10 r^o 1a, 2, 3
 v^o 4a, 5
 11 r^o 12, a note,¹ 15, 13
 v^o 49 (of 2 Edward II.), a Latin record,² 31 (of 2 Edward II.)

The eight cases of this term agree in text with the corresponding reports in *L*, *M*, *P*, *R*, and *S*.

In Hilary term there are thirteen cases of this term—namely 7–9, 12, 15–17, 20, 21, 30–32, 35 ; one case of 2 Edward II. (133b), and one case of Easter term 3 Edward II. (27c). Their order is as follows :

- 12 r^o 35b
 v^o 7b, 30, 16b
 13 r^o 27c Easter, 31b, 32b, 20c
 v^o 15b
 14 r^o 21a, 133b (of 2 Edward II.)
 v^o 12, 9c
 15 r^o 8, 17b

The versions which we find in *R* of ten of these cases—namely 9, 15–17, 20, 21, 30–32, 35—are unique, and case 30 occurs in none of the other manuscripts ; that of 7 is found in *S* and *T*, and those of 8 and 12 in *A*, *B*, *C*, *D*, *G*, *L*, *M*, *P*, *Q*, *S* and *T*.

Of Easter term *R* contains 17 cases—namely 4, 13, 15, 17, 18, 22, 25, 39–47, 49—which occur in the following order :

- 16 r^o 39b, 25ii, 40, 18ii, 41, 17b, 49d
 v^o 42ii, 43a, 44, 13b, 22b
 17 r^o 45, 15, 46
 v^o 4b, 47

Case 27 of this term has already been noticed as occurring among the reports of Hilary term. Eight of these cases—namely 13b, 17b, 18ii, 25ii, 39b, 42ii, 43a and 49d—appear in *R* in versions which are different from those in other manuscripts ; two of them, namely 40 and 41, are not found elsewhere ; and one of them, 39, is found in *Y* in another version but in no other manuscript. Six cases occur in the same version in *S* and *T* as in *R*, but not elsewhere—namely 4b, 22b

¹ En un *cui in uita* le bref se abati pur ceo qe le baroun fut en pleyne vie le jour du bref purchacé qe ele par son bref suppose estre mort, et si fust il

mort le jour du play.

² This is the Latin record mentioned on p. lxix (note 1) above, which also occurs on folio 20 r^o of *A*.

45, 46, 47, 48; one (case 27) in *B* and *G* only; one (case 44) in *B* and *G* and also in *S* and *T*, and one (case 15) in *B*, *G*, *L*, *M*, *P*, *S* and *T*.

R contains eight cases only in its reports of Trinity term of this year, which are arranged as follows :

- 17 v^o 2*a*
 18 r^o 9*a*, 19, 3*a*
 v^o 20, 21*a*, *a note*,¹ 22

Case 10 and 11 of this term occur in this manuscript,² but are placed in Michaelmas term of 4 Edward II. Of these ten 21*a* and the note are the only cases of which the versions in *R* are unique. Of the rest case 2*a* occurs in *M* and *P*, 3*a* in *A*, *C*, *D*, *M*, *P*, *S* and *T*, 9*a* in *M*, *P* and *T*, 10 in *A*, *C*, *D*, *M*, *P*, *T*, 11 in *A*, *B*, *D*, *G*, *M*, *P*, *S*, *T*, 19 and 20 in *B* and *G*, and 22 in a brief note of a case more fully reported in *S* and *T*.

It should be noticed that the versions which are peculiar to *R* in this year with one exception belong to Hilary and Easter terms, ten to the former and eight to the latter. *R* also contains one case in Hilary term and three cases in Easter term which occur in no other manuscript (except *Y*) either in the same or in any other version.

Lastly, we come to the reports in *B* and *G*, which for the last three terms³ of this year are in close agreement with one another. Now just as *C*, which agreed in text with *P* and differed from *A* in the second year, agreed with *A* and differed from *P* in the third year, so we have a somewhat similar change in *B*. Closely agreeing with *A* in the second year, it differs entirely, not only from that manuscript in the last three terms of the third year, but also from all the other manuscripts except *G*.

The cases in Michaelmas term are arranged as follows :

- 1*b*, 2, 3, 4*a*, 5, 8, 9, 10*a*, 13, 6*a*, 7, 12, 38, 14, 15, 16, 17, 18,
 19, 20, 23*b*, 39, 21, 40, 41*b*, 42, 43, 32, 44, 33, 34, 104*b* (of 2 Edward
 II.), 23 (of 2 Edward II.), 46, 55*b*, 10 *repeated*, 47, 26, 17 *repeated*,
 37, 31 *record*, 48.

or, arranged in the order in which they are printed in this edition,

- 1-10, 12-21, 23, 26, 31-34, 37-44, 46-48, 55.

The differences between the reports of this term in *B* and *A*, though not so great as in the three following terms, are yet considerable. There are no reports in *B* of 11, 22, 25, 27-31,⁴ 35, 36, 45, 49-54, all of which occur in *A*, but 38-40, 42-44, 46-48, which occur in *B*, are not found in *A*. On the other hand, the resemblance between *B* and *P* is

¹ Un bref de mortdauncestre fut porté vers iij. Le un morust. Le bref ne se abati poynt par *Inge*, pur ceo qe les tenements furent de lour purchaz Secus est si de hereditate.

² Case 11 is also placed in Michaelmas

term 4 Edw. II. in *B* and *G*.

³ It will be remembered that *G* begins with Hilary term 3 Edward II.

⁴ Case 31 appears as a record only in *B*.

fairly close. *B* lacks 11, 35, 45, and 49, which occur in *P*, but *P* contains every case which occurs in *B*. Moreover, there are no cases in which *B* agrees in text with *A* and disagrees with *P*. In 23, 41 and 55 the text in *B* agrees with *P*, and disagrees with *A*; in 1 it disagrees with both *A* and *P*. In point of order there is a general agreement between *A*, *B*, and *P*, and if the reports of this term in *P* are derived, as suggested on an earlier page, from the same source as *A*, it is probable that those in *B* are also ultimately derived from that source.

In Hilary term the cases in *B* and *G* are

10*b*, 11, 8, 22, 9*b*, 15*c*, 24, 20*b*, 26, 12, 27*a*, 35*a*, 21*c*, 18*b*, 14*b*

or, in the order in which they are printed,

8–12, 14, 15, 18, 20–22, 24, 26, 27, 35.

Thus no less than fifteen of the thirty cases which *A* contains are omitted in *B*. Moreover, eight of the fifteen cases which are common to *A* and *B* appear in different versions in the two manuscripts.¹ Once again, however, *B* agrees with *P*. Every case which appears in *B*, except 10, appears also in *P*, and in all these cases the same version appears in both *B* and *P*.² The order of the cases in the two manuscripts is much the same, though *P* contains more than *B*.

It is in Easter term that the individuality of *B* and *G*³ becomes conspicuous. The order of the cases in *B* is as follows :

30*a*, 12, 24, 14, 42*iv*, 2, 3*b*, 43*b*, 15, 17*a*, 19, 22*a*, 18*iii*, 49*b*,
1*b*, 31, 25*i*, 32, 33, 27*c*, 4*c*, 35, 36, 4 *Extra*, 44, 37, 42 (of
2 Edward II.), 19 *Trinity*.

Cases 38 and 42*iv* (*repeated*) occur among the Trinity cases in these manuscripts. The order in which the cases of Easter term are printed in this edition is as follows :

1–4, 12, 14, 15, 17–19, 22, 24, 25, 27, 30–33, 35–38, 42–44, 49.

The reports in *B* and *G* for this term are obviously not in agreement with those in *A*, for that manuscript contains thirteen cases only, whereas *B* contains as many as twenty-six cases. Moreover, *B* contains five only of the thirteen cases in *A*, and three of these five appear in different versions in the two manuscripts. The resemblance between *B* and *P* is scarcely any closer than between *B* and *A*. The order is

¹ Cases 9, 10, 11, 15, 18, 20, 21 and 35.

² Case 10*b* appears in *L*, *S* and *T*.

³ Two short notes occur among the cases of this term in *G* which are not found in *B*.

(1) Si un homme truve les avers un estraunge pessaunt sa commune il purra avouer saunt ces comuners

com pur damage fesaunt en sa commune et en son several quant a ly quei avers sunt pris etc. (fol. 5 v°).

(2) Nota en une annuité si l'especialté veut *dedi* la ne covent mye lier seisine, et la put homme traverser la seisine. Mes s'il vet *concessi* saunt *dedi* la ne covent mye lier seisine, car homme ne traversera pas (fol. 8 r°).

decidedly different; and out of twenty-six cases in *B* there are only fifteen¹ which also occur in *P*, and out of thirty cases in *P* there are fourteen² which are not found in *B*. Lastly, four of the fifteen cases which occur in both *B* and *P*—namely 14, 19, 22, 35—are represented in the latter manuscript by mere notes, and five—namely 1, 3, 4, 18, 27—appear in entirely different versions.

As it has already been noticed that *L* in this term is probably related to *P*, though not very closely, a comparison between *B* and *L* may be of interest. *L* contains thirty-four cases for this term, of which twenty³ occur in *B*; while *B* contains six⁴ cases which are not found in *L*. Thus of the twenty-six cases which occur in *B*, *L* contains five more than *P*. Of the twenty cases occurring in both *L* and *B*, six⁵ appear in different and eleven in the same versions in the two manuscripts, and three⁶ are represented in *L* by mere notes. In this respect also *B* is less different from *L* than from *P*.

In Trinity term the cases in *B* and *G* are :

24*a*, 23, 25, 38 *Easter*, 26, 3*b*, 16, 14*b*, 42*iv Easter*, 18, 29, 4*b*,
30*a*, 20, 27*a*, 28.

Case 19 occurs among the *Easter* cases of this year, and case 11 among those of Michaelmas 4 Edward II. Including these two cases and excluding the two *Easter* cases, the Trinity cases are printed in the following order :

3, 4, 11, 14, 16, 18–20, 23–30.

Three only of these cases, namely 3, 4 and 11, occur in *A*, and the versions of 3 and 4 in that manuscript are not the same as in *B*. Cases 3, 4, 11, 14 and 18 occur in *P*. The versions of 3, 4 and 14 are different in *B* and *P*, but those of 11 and 18 are the same. Of the remaining eleven cases, 19 and 20 occur in *R*, but 16, 23–30 are found only in *B* and *G*.⁷ Cases 3 and 11 also occur in *R* in the same version as in *P*. It is obvious that for this term the reports in *B* and *G*, which are in complete agreement, are independent of those in our other manuscripts, though seven out of the sixteen appear in some of them.

Thus the reports of the third year when regarded as a whole strongly support the 'pamphlet' theory. We have in the second year *C* and *Q* closely agreeing with *P* and differing from *A* and *D*, but in the third year agreeing with *A* and *D* and differing from *P*. Again, *B* agrees with *A* and *D* in the second year, but in the third year it is very different. Also *P* and *M* are more closely related to one another in the third year

¹ Namely, 1–4, 12, 14, 15, 18, 19, 22, 24, 25, 27, 30–33, 42, 43, 49.
22, 24, 25, 27, 35, 38.

² Namely, 5–11, 13, 16, 21, 23, 26,
28, 29.

³ Namely, 2–4, 12, 14, 15, 17–19,

⁴ Namely, 1, 35–38, 44.

⁵ Namely, 3, 4, 18, 25, 27, and 42.

⁶ Namely, 19, 22 and 30.

⁷ Cases 24, 27 and 30 appear in *Y*.

than they are in the second; and *S* and *T* agree with one another remarkably closely in the first two terms of the third year; but in Easter and Trinity terms *T* agrees with *A* and *D*. All this is easy to understand if the reports of the reign of Edward II. were in the course of his reign circulating as pamphlets containing a few terms. The pamphlets containing reports of the early years probably grew larger as time went on, and sometimes contained the reports of a few years instead of a few terms. The men who compiled our large Year Books of Edward II., written in the reign of Edward III., used such pamphlets, some large and others small, as they were able to obtain. Thus two manuscripts of the Year Books might be in close agreement for several years, and then become quite different. It is also likely enough that a compiler sometimes obtained more than one pamphlet of the same period, so that his reports of a few terms were compiled partly from one pamphlet and partly from another.

We are on less sure ground with regard to the ultimate origin of the various reports of this year. They certainly cannot be claimed either as proving or disproving that the Year Books of this period were derived wholly or partially from a single version. Leaving *R* on one side, since it has some marked peculiarities of its own, let us confine our attention to *A*, *B*, *C*, *D*, *G*, *L*, *M*, *P*, *Q*, *S*, *T* and *X*. As regards Michaelmas term these manuscripts fall into three groups, the first consisting of *A*, *C*, *D* and *Q*, the second of *L*, *M*, *P*, *S*, *T* and *X*, and the third of *B* and *G* only. Nevertheless, the particulars printed above show that, in spite of some difference in detail, they are probably based upon a common original.

In Hilary term, we have four groups, since *S* and *T* now differ from *L*, *M*, *P*, and *X*; we also have reports in *G* which are in close agreement with those in *B*. The reports in the first of these groups are almost certainly derived from the same original as those in the second; and so also, it would seem, were the reports of the third group—that is, *S* and *T*, though they are no longer closely related to them. Similarly the reports of the fourth group—that is, *B* and *G*—though very different from those in the first group, probably had the same original as the reports in the second group. In short, we may suspect that as in Michaelmas term, so in Hilary term, the reports in all the manuscripts now under discussion had a common original; but it must be remembered that there are twelve Extra cases in *S* and *T* of which nine are not found in any of the other manuscripts.¹

As regards Easter term the groups are the same as in Hilary term except that *T* contains two sets of reports, the one occurring, as in *S*, among the Hilary cases and belonging to the third group, and the other

¹ Case 1 occurs in *Y*, 4 in *B* and *G*, and 5 in *L*.

occurring under its proper heading of Easter term and belonging to the first group. Moreover, though *L* may still be classified as belonging to the second group, it differs considerably from *M* and *P*. The reports in the first group and the early reports of the second group agree sufficiently for them to have been derived from the same original, but none of the cases of the latter part of the second group occur in the first. Twelve Extra cases also occur in *L* which are not found in the other manuscripts of the second group (that is, *M* and *P*), nor, with three exceptions, namely 5, 14 and 16, in any of the other manuscripts. In the third group the reports of this term are few, but as far as they go they seem to be drawn from the same original as the second group. Lastly, with two exceptions—that is to say 36 and 37—all the cases in the fourth group (that is *B* and *G*) occur in one or more manuscripts of the other groups, but in a decidedly different order; and four of them, namely 30 to 33, occur in no other manuscripts except *L*. Moreover, certain of them, notably 19, 22, 30¹, 35, appear in the second group as short notes rather than as reports. In spite, however, of these differences the reports of the fourth group may perhaps be derived from the same original as the second group; but this original in the course of its transmission into the forms which it has assumed in these groups must have been very much altered. Certain cases in each group must have been omitted, others inserted, and some replaced by improved versions. The outstanding feature, however, of the reports of this term are the small number of cases in the first group, and the Extra cases in *L*, *S* and *T*.

Finally, we come to Trinity term. Here our first group (*A*, *C*, *D*, *T*) contains eleven cases only, all of which are found in *M* and *P* in the same versions. Seven of them also occur in the same version in *S*, three among the Hilary cases of that manuscript, and four more after the insertion of other matter at the end of Hilary term and without a special heading. On the other hand, not more than three of these cases—namely 3, 4 and 11—are found in *B* and *G*, and two of these are in different versions. There remain, however, nineteen cases of this term not one of which is found in *A*, *C* or *D*, and not more than three of them in *S* and *T*. Of these nineteen cases three—namely 12, 15 and 17—occur in *M* and *P* only, and two of them—namely 21 and 22—in *S* and *T* only; but thirteen of them appear in *B* and *G*, and eleven of these in none of the other manuscripts now under discussion. Thus as regards this term *B* and *G* contain a number of cases which are scarcely represented in our other manuscripts. They must be derived either from entirely different originals or from one which has been divided

¹ Case 30 occurs in *Y*, a manuscript not now under discussion.

into two parts, the cases in *A*, *C* and *D* being derived from one part, and those in *B* and *G* from the other.

So far nothing has been said of *R*. This manuscript appears, at any rate as regards much of the four earliest years of the reign of Edward II., to consist of selections; but in two terms of the third year the reports selected are conspicuous for their individuality, and differ considerably from those found elsewhere. In Michaelmas term, excluding a brief note, we have eight cases only, and they are derived from the same original as the reports in the other manuscripts. In Hilary term, though one case only occurs which is not found in other manuscripts,¹ as many as ten cases out of a total of thirteen are so differently reported as to require printing in this edition in special versions. Of the seventeen Easter cases in *R* eight occur in special versions, two, namely 40 and 41, are missing in all the other manuscripts, and one, namely 39, is only found in *Y*. Lastly, in Trinity term the reports in *R* are represented by a selection of seven cases and a note, but only one of these cases, namely 21, occurs in a special version. In spite, however, of the large proportion of special cases which occur among them in Hilary and Easter terms, there is no strong reason for thinking that the reports of this year in *R* are not derived from the same original or originals as those in the other manuscripts. They seem to be selected reports, some of which have been much revised by a frequenter of the courts or perhaps by one of the serjeants.

Now it may be said that the Extra Cases which appear in *L*, *S* and *T*, the small number of cases which appear in Easter and Trinity terms in *A*, *C*, *D*, and the fact that most of the Trinity cases appearing in *B* and *G*, two of our most important manuscripts, are not found elsewhere, tend to show that the reports of this period were not based upon a common original. But before we accept this conclusion it will be well to reflect on some other possibilities. We have the admirable reports by the compiler of *Y*, whose own observations show that he busied himself seeking information and making notes in court. Most of his reports in the following pages appear to be entirely different from those in the other manuscripts, and they were in all probability his own work, while a considerable number of his cases were not reported elsewhere. He was evidently an independent reporter, and there may have been others like him. But if there were men in court taking notes and reporting cases for their own instruction and pleasure, we need not assume that there were not other men who reported cases as a business. Supposing that there were two such persons working, let us say, on alternate days. Their reports might circulate in some

¹ Case 30.

terms, in separate pamphlets ; in others, as a single pamphlet. If they circulated separately, one might be copied much more extensively than the other. In short, the work of one of these reporters might eventually constitute the main body of the reports of a given term as generally known to those who studied such literature, while the work of his colleague might be preserved, if at all, in a few manuscripts only. Again, suppose that there were only one such professional reporter. From time to time, when he needed relief, others would have been found to take his place. Various reports of a case which he had been unable to hear may have been made for him by others. The one which he selected and incorporated in his own reports of the particular terms may have been the best, but the author of a rejected version would probably prefer his own. And if at some later date this author should have chanced to copy the manuscript of the professional reporter, he would substitute his own version for that of his successful rival whose report had been accepted. Possibly a man who had acted as, or endeavoured to act as, a deputy in this way may have afterwards acquired a good reputation as a professional reporter, and his revised version of earlier reports would be much prized. If, then, we accept the pamphlet theory we may well consider the possibility that the Year Books, as we know them, were for the most part the work of one or more professional reporters. The first three years of the reign of Edward II., however, afford insufficient material for determining this question ; and for this purpose a careful analysis of the reports of subsequent years will be required.

4 EDWARD II.—The reports of Michaelmas term of this year appear in the fourth volume of this series, and those of Hilary term and the greater part of Easter term in the present volume. An examination of the relation of the reports of this year in the different manuscripts to one another must be deferred until the year is completed. Meanwhile it may be observed that in Michaelmas and Hilary terms the reports in *A*, *D* and *T* agree with one another very closely ; and this is also the case with those in *C*, *P*, *Q* and *R*. On the other hand, the reports in *M* no longer agree with those in *P*.

If the detailed particulars of the relations of the manuscripts to one another which have been related in this Introduction are long and tedious, they may at least provide material for some useful and interesting conclusions about the origin of the Year Books.

APPENDIX I

PARTICULARS¹ OF THE QUIRES AND FOLIOS OF THE MANUSCRIPTS
USED IN THIS EDITION.

A

MS. Ff.—3—12 in the Cambridge University Library.

30 × 22 centimetres.

Folio 1, a flyleaf.

2—5 <i>detached</i>	$\frac{6-17}{11}$	18, 19,	$\frac{20-29}{24}$	$\frac{30-41}{35}$	$\frac{42-53}{47}$
$\frac{54-65}{59}$	$\frac{66-73}{69}$	$\frac{74-83}{78}$	$\frac{84-97}{90}$	$\frac{98-105}{101}$	$\frac{106-113}{109}$
$\frac{114-125}{119}$	$\frac{126-137}{131}$	$\frac{138-149}{143}$	$\frac{150-161}{155}$	$\frac{162-169}{165}$	$\frac{170-181}{175}$
$\frac{182-193}{187}$	$\frac{194-203}{199}$	$\frac{204-215}{209}$			

NOTE.

Folio 84 has been misplaced by the binder and should follow 97.

B

Add. MS. 35094 at the British Museum.

27·5 × 18·5 centimetres.

Folio 1, a flyleaf of paper.

$\frac{2-13}{7}$	$\frac{14-25}{19}$	$\frac{26-37}{31}$	$\frac{38-45}{41}$	$\frac{46-57}{51}$	$\frac{58-63}{60}$
$\frac{64-75}{69}$	$\frac{76-87}{81}$	$\frac{88-99}{93}$	$\frac{100-111}{105}$	$\frac{112-120}{115}$	$\frac{121-124}{122}$
$\frac{125-134}{129}$	$\frac{135-146}{140}$	$\frac{147-150}{148}$	$\frac{151-162}{156}$	$\frac{163-174}{168}$	$\frac{175-186}{180}$
$\frac{187-198}{192}$	$\frac{199-208}{204}$	$\frac{209-224}{216}$	$\frac{225-229}{227}$	$\frac{230-237}{233}$	$\frac{238-248}{243}$
$\frac{249-264}{256}$	$\frac{265-278}{271}$	$\frac{279-289}{284}$	$\frac{290-305}{297}$	$\frac{306-318}{312}$	$\frac{319-334}{326}$
$\frac{335-342}{338}$					

NOTES.

There is an old numeration of the folios in very small finely drawn Arabic figures of the early eighteenth or possibly seventeenth century at the left-hand side of the bottom margin. Apparently 331 (a half folio) of the modern pencil foliation was unmarked in this old numeration, which owing to an oversight runs 329, 340, 341 . . . ; 329 corresponds to the modern 330 and 340 to the modern 332. This old numeration shows that the present defects of the manuscript are not of recent date.

The conjugates or half folds of 120, 199, 200, 225, 238, 279, 306, 307, and 316, which should follow 111, 208 (*two folios*), 229, 248, 289, 318 (*two folios*), and 309 have been cut away. All these except the conjugates of 120, 316—and possibly 306 and 307—were probably blank folios.

¹ As to these particulars see p. lxi, above.

C

Add. MS. 37658 at the British Museum.

40 × 17·5 centimetres.

Folio 1, a flyleaf.

Folio 2 (*detached* record of an assize of novel disseisin).

Noue Narrationes $\frac{3-10}{6}$ $\frac{11-18}{14}$ 19—21 (*detached*)

Table of Cases 22, $\frac{23-28}{25}$ $\frac{29-38}{33}$

<i>Year Book of Edward II</i>		$\frac{39-46}{42}$	$\frac{47-54}{50}$	$\frac{55-62}{58}$	$\frac{63-70}{66}$
$\frac{71-78}{74}$	$\frac{79-86}{82}$	$\frac{87-94}{90}$	$\frac{95-102}{98}$	$\frac{103-110}{106}$	$\frac{111-118}{114}$
$\frac{119-126}{122}$	$\frac{127-134}{130}$	$\frac{135-142}{138}$	$\frac{143-150}{146}$	$\frac{151-158}{154}$	$\frac{159-166}{162}$
$\frac{167-174}{170}$	$\frac{175-176}{175}$	$\frac{177-184}{180}$	$\frac{185-192}{188}$	$\frac{193-200}{196}$	$\frac{201-208}{204}$
$\frac{209-216}{212}$	$\frac{217-224}{220}$	$\frac{225-232}{228}$	$\frac{233-239}{235 \text{ blank}}$	$\frac{240-247}{243}$	$\frac{248-259}{253}$
$\frac{260-266 \text{ blank}}{263}$	$\frac{267-274}{270}$				

NOTE.

The blank folios between 235 and 236 and between 266 and 267 are unnumbered.

D

MS. 139 in the Library at Lincoln's Inn.

30·5 × 22·5 centimetres.

Nouae Narrationes $\frac{1-8}{4}$ $\frac{9-16}{12}$ $\frac{17-22}{20}$

<i>Year Book of Edward II</i>		$\frac{23-30}{20}$	$\frac{31-42}{36}$	$\frac{43-50}{46}$	$\frac{51-58}{54}$
$\frac{59-66}{62}$	$\frac{67-74}{70}$	$\frac{75-82}{78}$	$\frac{83-90}{86}$	$\frac{91-98}{94}$	$\frac{99-104}{102}$
$\frac{105-112}{108}$	$\frac{113-120}{116}$	$\frac{121-128}{124}$	$\frac{129-136}{132}$	$\frac{137-144}{140}$	$\frac{145-150}{148}$
$\frac{151-158}{154}$	$\frac{159-166}{162}$	$\frac{167-174}{170}$	$\frac{175-182}{178}$	$\frac{183-190}{186}$	$\frac{191-198}{194}$
$\frac{199-202}{200}$	$\frac{203-210}{206}$	$\frac{211-218}{214}$	$\frac{219-226}{222}$	$\frac{227-234}{230}$	$\frac{235-242}{238}$
$\frac{243-250}{246}$	$\frac{251-258}{254}$	$\frac{259-266}{262}$	$\frac{267-272}{270}$	$\frac{273-280}{276}$	$\frac{281-288}{284}$

<u>289—296</u>	<u>297—304</u>	<u>305—312</u>	<u>313—318</u>	<u>319—326</u>	<u>327—334</u>
292	300	308	316	322	330
<u>335—342</u>	<u>343—350</u>	<u>351—358</u>	359, 360	<u>361—370</u>	
338	346	354		366	

NOTES.

The half-folds or conjugates of 17 and 18 have been cut away.

„	„	100 and 101	„
„	„	145 and 146	„
„	„	267 and 268	„
„	„	313 and 314	„

G

MS. Gg—5—20 in the University Library at Cambridge.

29·3 × 17 centimetres.

<u>1—8</u>	<u>9—16</u>	<u>17—24</u>	<u>25—32</u>	<u>33—40</u>	<u>41—48</u>
4	12	20	28	36	44
<u>49—60</u>	<u>61—68</u>	<u>69—78</u>	<u>79—86</u>	<u>87—96</u>	<u>97—104</u>
54	64	73	82	91	100
<u>105—112</u>	<u>113—120</u>	<u>121—128</u>	<u>129—136</u>	<u>137—143</u>	<u>144—149</u>
108	116	124	132	140	146
150	<u>151—160</u>	<u>161—165</u>	<u>166—173</u>	<u>174—185</u>	186
	155	163	169	179	
<u>187—196</u>					
191					

NOTES.

Two folios have been cut away after 143, one was the conjugate or half-fold of 137, and the other of 150.

A folio between 164 and 165, being the conjugate of 162, has been cut away.

The conjugate of 186 has been cut away from the end of the volume.

L

Add. MSS. 25183 at the British Museum.

30·5 × 22 centimetres.

Folio 1, a paper flyleaf.

<u>2—9</u>	<u>10—17</u>	<u>18—27</u>	<u>28—29</u>	<u>40—46</u>	<u>47—58</u>
5	13	22	33	43	52
<u>59—63</u>	<u>64, 65</u>	<u>66—77</u>	<u>78—87</u>	<u>88—95</u>	<u>96—106</u>
61	64	71	82	91	101
<u>107—116</u>	<u>117—128</u>	<u>129—138</u>	<u>139—150</u>	<u>151—162</u>	
111	122	133	144	156	

NOTES.

Folios 28—29, 40—46 and 59—63 are on guards.

The conjugates of 40 and 59 have been cut away.

Two folios which preceded 88 and two which followed 95 are now missing.

The conjugate of 96 has been cut away.

M

MS. Ff—2—12 in the Cambridge University Library.

29 × 20·5 centimetres.

There is no modern foliation in this manuscript. The ancient foliation begins with 9.

9—12 <i>detached</i>	13—24	25—36	37—45	46—57	58—67
	18	30	40	51	62
68—79	80—91	92—103	104—115	116—119	120—131
73	85	97	109	117	125
132—143	144—155	156—167	168—179	180—183	
137	149	161	173	181	

NOTES.

A folio between 36 and 37, being the conjugate of 45, has been cut away.

Folios 90 and 101 are missing.

Folio 183 v^o is blank.

P

Harleian MS. 835 at the British Museum.

31 × 20·5 centimetres.

The folios of this manuscript are all fixed in guards, so that it is now impossible to distinguish the quires.

Q

Hargrave MS. 210 at the British Museum.

30 × 21 centimetres.

Folio 1, *paper*.

2—13	14—25	<i>a quire</i>	26—37	38—49	50—61
7	19	<i>missing</i>	31	43	55
62—72	73—84	85—96	97—107	108—119	120—131
67	75	90	101	113	125
132, 133	134—145	146—157	158, 159	160—163	164—175
	139	151		161	169
176—180 <i>now</i>	181—191	192—203			
<i>detached</i>	185	195			

NOTES.

The lower half of folio 72 has been cut away.

A folio following 72, being the conjugate of 62, has been cut away.

A folio following 101, being the conjugate of 102, has been cut away.

A folio following 181, being the conjugate of 190, has been cut away.

Folio 180 is intrusive, and was perhaps a flyleaf to the two quires following it.

R

MS. Dd—9—64 at the Cambridge University Library.

27 × 17·5 centimetres.

<u>1—8</u>	<u>9—16</u>	<u>17—24</u>	<u>25—32</u>	<u>33—40</u>	<u>41—48</u>
4	12	20	28	36	44
<u>49—55</u>	<u>56—63</u>	<u>64—71</u>	<u>72—79</u>		
52	59	67	75		

NOTE.

A folio between 55 and 56 has been cut away.

S

Harleian MS. 1062 at the British Museum.

30·5 × 32 centimetres.

<u>1—12</u>	<u>13—24</u>	<u>25—26</u>	<u>27—32</u>	<u>33—42</u>	<u>43—53</u>
6	18	25	29	37	48
<u>54—65</u>	<u>66—71</u>	<u>72—83</u>	<u>84—95</u>	<u>96—107</u>	<u>108—117</u>
59	68	77	89	101	112
<u>118—129</u>	<u>131—146</u>	<u>147—160</u>			
123	138	153			

NOTES.

Single folios are missing between 35 and 36, 39 and 40, 48 and 49, and possibly between 150 and 151 and 156 and 157.

The last quire has been wrongly folded and the true order of the folios seems to be 154—160, 145—153.

T

Harleian MS. 3639 at the British Museum.

33 × 23 centimetres.

<u>1—12</u>	<u>13—20</u>	<u>21—32</u>	<u>33—44</u>	<u>45—56</u>	(12 folios missing)
6	<i>detached</i>	26	38	50	
<u>57—68</u>	69, 70	<u>71—82</u>	<u>83—90</u>	<u>91—101</u>	102—106
62		76	86	95	
<u>107—118</u>	119,	<u>120—131</u>	<u>132—143</u>	<u>144—155</u>	156, 157
112		125	137	149	
<u>158—169</u>	170, 171	<u>172—183</u>	<u>184—194</u>		
164		177	189		

NOTES.

13—18. The true order of these folios is 13, 14, 18, 17, 15, 16.

19, 20. Four folios are probably missing before 19.

69, 70. These belong to the preceding quire.

83—90. Four folios are missing in the middle of this quire.

91—101. One folio between 91 and 92, being the conjugate of 100, is missing.

102—106. The true order of these folios is 104, 106, 105, 102, 103. Some folios have disappeared at the beginning of the quire.

119. This belongs to the preceding quire.

156, 157. These belong to the preceding quire.

170, 171. These belong to the preceding quire.

The last case on folio 194 v^o is unfinished, and a folio following 194 has been cut away.

X

Tanner MS. 13 in the Bodleian Library at Oxford.

28·5 × 19·5 centimetres.

<u>1—12</u>	<u>13—28</u>	<u>29—44</u>	<u>45—60</u>	<u>61—76</u>	<u>77—90c</u>
3	20	36	52	68	84
<u>91—106</u>	<u>107—118e</u>	<u>119—142</u>	<u>143—152</u>	<u>153—162</u>	<u>163—178</u>
98	114	130	144e	158	170
<u>179—194</u>	<u>195—210</u>	<u>211—226</u>	<u>227—242</u>	<u>243—258</u>	<u>259—274</u>
186	202	218	234	250	266
<u>275—290</u>	<u>291—310</u>	<u>311—326</u>	<u>327—342</u>	<u>343—358</u>	<u>359—374</u>
282	300	313	334	350	366
<u>375—390</u>	<u>391—406</u>	<u>407—414</u>	<u>415—430</u>	<u>431—446</u>	<u>447—462</u>
382	398	410	422	438	454
<u>463—478</u>	<u>479—490</u>				
470	484				

NOTES.

There is no ancient numeration of the folios in this MS. Those rectos and versos on which there is writing have been numbered consecutively in a hand of the eighteenth century. A blank folio following 90 has recently been marked 90*b* and 90*c*, and 90 itself has been re-marked 90*a*.

Other blank rectos and versos have been marked 118*b*, 118*c*, 118*d*, 118*e*; 144*b*, 144*c*, 144*d*, and 144*e*; and 118 and 144 have been re-marked 118*a* and 144*a* respectively. The first two folios of the MS., being the conjugates of 9/10 and 11/12, and the conjugates of 109/110, 145/146, and 153/154, which should follow 118*c*, 144*e*, and 162 respectively, have been cut away. Folio 115/116 is pasted on to 117/118 and the quire 119—142 is intrusive and is written in a different hand from that of the rest of the MS.

Y

Add. MS. 35116 at the British Museum.

36·5 × 25 centimetres.

<u>1—3 detached</u>	<u>4—15</u>	<u>16—27</u>	<u>28—39</u>	<u>40—52</u>	<u>53—64</u>
	9	21	33	46	58
<u>65—75</u>	<u>76—88</u>	<u>89—100</u>	<u>101—111</u>	<u>112—124</u>	<u>125—136</u>
69	81	94	106	118	130
<u>137—148</u>	<u>149—159</u>	<u>160—171</u>	<u>172—183</u>	<u>184—195</u>	<u>196—207</u>
142	154	165	177	189	201
<u>208—219</u>	<u>220—231</u>	<u>232—243</u>	<u>244—255</u>	<u>256—267</u>	<u>268—279</u>
213	225	237	249	261	273
<u>280—291</u>					
286					

NOTES.

Folios are missing between 65 and 66, 108 and 109, and 156 and 157.

Folios 43, 82, and 114 are intrusive.

Folios 208—267 forming 5 quires are misplaced and should come at the end of the volume. Portions of the MS. containing one or more quires or part of a quire are missing after folios 267 and 291.

Z

MS. No. 137 (2) in the Library at Lincoln's Inn.
 34 × 23 centimetres.

NOTE.

The particulars of the quires of this manuscript are reserved for another volume.

EXTRA MS.¹

Additional MS. 32086 at the British Museum.

24 × 16 centimetres.

Folio 1, a flyleaf.

$\frac{2-13}{7}$	$\frac{14-21}{17}$	$\frac{22-29}{25}$	$\frac{30-41}{35}$	$\frac{42-51}{46}$	$\frac{52-60}{55}$
$\frac{61-67}{64}$	$\frac{68-75}{71}$	$\frac{76-84}{79}$	$\frac{85-90}{87}$	91 <i>detached</i>	$\frac{92-102}{96}$
$\frac{103-121}{111}$	122, 123	$\frac{124-127}{125}$	128 <i>detached</i>		

NOTES

Folios 59, 63, and 81 are intrusive. A folio between 96 and 97, being the conjugate of 97, is missing.

A folio between 102 and 103, being the conjugate of 121, has been cut away.

¹ This MS. has not been used in the first four volumes of this series nor in the present volume. See p. l above.

APPENDIX II

THE brief report (*a*) which follows occurs in one manuscript only, and its correct interpretation is doubtful. The pedigree, obviously corrupt, is altogether out of agreement with the rest of the report. Apparently three sisters held property as parceners, and the descendants of one, or perhaps two, of these sisters are bringing an action against a person who is in possession of the share of the third sister. According to the marginal description the action is one of ael, but more probably it was one of cosinage, as it appears to be admitted that the sisters were seised after the death of their ancestor.

The two notes (*b* and *c*) occur among the cases of Trinity term 1 Edw. II. in the Additional MS. 25183 (here called *L*), and were not printed in the first volume of this series.

(*a*)¹ Jon E. et Luce porterent bref vers Willem et fesoynt un tittle et counterent par la pee de gru *sicut patet*.

$\left\{ \begin{array}{l} \text{Iuliana} \\ \text{Lucia} \\ \text{Alicia} \end{array} \right\}$	sorores	$\left\{ \begin{array}{l} \text{Thomas} \\ \text{Lucia} \\ \text{Iohannes} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{filius suus} \\ \text{Agnes filia} \\ \text{petit} \end{array} \right\}$
---	---------	--	--

Pass. Julian avoit un fiz Roger qi la survesquit, et entra l'estat Julian cum parcener ove Luce et Alice, et entre eux et Jon² fut la departisoun fet etc. ; issi qe Roger prist sa purpartie, et seisi fut de cele et murust seisi ; apres qi mort entrames cum fiz et heir Roger. Jugement si vers nous pussez rien demander.

Toud. Julian ne avoit nul fiz. Prest etc.

Pass. Qi fiz fut il donques ? Ele avoit un fiz Roger, qi entra etc. et murust seisi. Prest etc.

Toud. Il fut bastard. Prest etc.

Pass. A ceo n'avendrez pas, del hour qe ceo ne fut pas dedit q'il entra et murust seisi etc. Jugement si apres sa mort etc.

Toud. Al tens qe Roger entra si furent Luce et Agnes coverts de baroun, par quei etc.

Herle. De ceo qe Luce et Agnes nent reclamant³ etc. si l'accepterent com privé et parcener.

Pass. Ce ne agrevera lour isseu si eux al tens de acceptement neussent esté de lour propre volonté. Mes desicom eux furent covertes etc. Jugement etc.

(*b*)⁴ En un *cessavit per biennium* le tenaunt fist defaute, et puis vynt en court par attourné. Et l'autre voleit aver tendu les arrerages et ne fut mye resceu, pur ceo qe l'attourné ne pout nul seurté trover en le noun son seigneur.

(*c*)⁴ *Nota.* Si le petit *Cape* fut issu et retourné ; a quel jour le tenaunt vynt, et dit qe la defaute ne ly devereit nuyre, qe il fut enprisoné en tiel leu, prest etc. Et le demaundaunt dit q'il avoit attourné Johan par noun en le plee, par quei la prisonement ne ly dust valer, nec per hoc potest sanare defaltam etc.

¹ From *C* (folio 50 v^o). Among the cases of Michaelmas term 2 Edward II. The words 'de auo' are written in the margin of the report. ² This word is underlined for deletion. It is written in error for 'Roger.' ³ An error for 'reclamerent.' From *L* (folio 5 v).

LEGAL CALENDAR

FOR THE

FOURTH YEAR OF KING EDWARD II.

The fourth year of the reign began on 8 July 1310. The Sunday letter was D for 1310 and C for 1311. In 1311 Easter fell on 11 April.

JUSTICES OF THE KING'S BENCH.

Roger le Brabazon, C.J. ; Gilbert of Roubery ; Henry Spigurnel.

JUSTICES OF THE COMMON BENCH.

William of Bereford, C.J. ; Lambert of Trikingham ; Hervey of Stanton ; John of Benstede ; Henry le Scrope.

NAMES OF COUNSEL WHO ARE MENTIONED IN THIS VOLUME.

Asshele, Robert of	Laufare, Nicholas of
Botiller, John	Loveday, John
Cambridge, John of	Malberthorpe, Robert of
Claver, John	Miggeley, William of
Denham (Denom), John of	Passeley, Edmond
Denham (Denom), William of	Roston <i>or</i> Royston, William of
Friskenev, Walter of	Russell, Robert
Hambury, Henry of	Scotre, Roger of
Hartlepool, Geoffrey of	Scrope, Geoffrey le
Hedon, Robert of	Stonore, John of
Hengham <i>or</i> Ingham, John of	Toudeby, Gilbert of
Herle, William of	Wallingford, Peter of
Huntingdon, Ralph of	Warwick, Nicholas of
Ingham, <i>see</i> Hengham	Wescote (Westcotes), John of
Kingshemede, Simon of	Willoughby, Richard of

Of these the following are mentioned in the reports, but not in the Plea Rolls of Hilary and Easter terms of this year :

Friskenev, Walter of	Wallingford, Peter of
Hartlepool, Geoffrey of	Warwick, Nicholas of
Scotre, Roger of	

And the following are mentioned in the Plea Rolls only :

Goldington, William of	Hampton, Richard of
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THE YEAR BOOKS OF EDWARD II.

VOL. VI.

FOURTH YEAR.

PLACITA DE TERMINO SANCTI MICHAELIS
ANNO REGNI REGIS EDWARDI FILII REGIS
EDWARDI QUARTO.

35. HOTHUM *v.* DANIEL.¹

Intrusioun ou le tenant dit qe celui qi le demaundaunt supposa qe n'avoit q'a terme de vie il avoit fee taillé, prest etc. q'il n'avoit etc. ; et s'abati, prest etc.

Un Robert porta soun bref d'yntusioun etc. et dit 'en les queux le tenant n'ad entré sy noun par abatement q'en ceo fit apres la mort W. de C. qe ceux tient a terme de vie² d'un N. pere le demaundaunt.'

Pass. Ceux tenemenz furent en ascun temps en la seisine un Richard vostre ael, qi heir vous estes, qe douna ceux tenemenz a W. de C. nostre pere³ et a les heirs de soun corps issauntz. Richard avoit un fiz T. par noun pere le demaundaunt, qi heir etc., q'en la seisine W. conferma le doun soun pere etc. dount si nous fuissoms empliedié etc. il garrantisseit etc. Jugement, depuis qe nous sumes heir W., a qi le confermacioun⁴ fust fait ove la garrauntie, si encountre etc.

Toud. Yl y sount en les deux fetz deux clauses de garrantie, au quel fait voilletz vous tenir ?

Herle. Al confermement vostre pere.

Toud. Nous sumes a issue de plee, qar nous vous dyoms q'il abati apres la mort W. tenant a terme de vie, la dient il q'il tyent en fee taillé. Et q'il tyent a terme de vie prest etc., et qe J. s'abatist prest etc.

[*Pass.* Est ceo le fet vostre pere ou noun ?

Toud. Nent le fet W. nostre pere, prest etc.]⁵

Et alii econtra.

¹ From *B*, collated with *G*. The headnote is from *B*. A report of this case from *A*, collated with *D*, *M*, *P*, *T*, *R*, will be found in vol. iii. at p. 163. ² *Ins.* du lees, *G*. ³ The words 'qi il supposa qe avoit a terme de vie' are here inserted in a later hand in *B*. ⁴ confermement, *G*. ⁵ The words in brackets are supplied from *G*.

PLEAS OF MICHAELMAS TERM IN THE FOURTH
YEAR OF KING EDWARD THE SON OF KING
EDWARD (*continued*).

35. HOTHUM *v.* DANIEL.¹

Intrusion, where the tenant said that he whom the demandant supposed to have had only a term for life, had a fee tail, and this he was ready to aver. [The demandant said] that he had not fee tail and [that the tenant] abated therein etc.; and this he was ready to aver.

One [John] brought his writ of intrusion etc. and said 'into which tenements the tenant had not entry unless by the abatement which he made therein after the death of [William Daniel] who held them for the term of his life of one [Adam] the demandant's father.'

Passeley. These tenements were sometime in the seisin of one [Robert] your grandfather whose heir you are. He gave them to [William Daniel] our father and the heirs of his body issuing. [Robert] had a son [Adam] by name the father of the demandant, whose heir etc. who, when the tenements were in the seisin of W. confirmed the gift of his father etc. and granted that if we were impleaded etc., he would warrant etc. Since we are the heir of W. to whom the confirmation was made with the warranty, we ask judgment if against etc.

Toudeby. There are in the two deeds two clauses of warranty, to which of them will you hold?

Herle. To the confirmation of your father.

Toudeby. We are at issue in this plea, for we say that he abated after the death of W. the tenant for a term of life, whereas they say that they hold in fee tail. And that he held for a term of life and that [the tenant] abated therein, ready are we to aver.

Passeley. Is this the deed of your father or not?

Toudeby. Not the deed of our father. Ready are we etc.

And the others to the contrary.

¹ This appears in the Old Edition, p. 94. The proper names are corrected by the record. They should be com-

pared with those in the earlier report mentioned in note ¹ opposite.

Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 8d, Yorks.

John of Hothum and Agnes his wife by Thomas of Burton their attorney demand against John Daniel of Lokington twelve messuages fourteen bovates and five acres of land and three acres of meadow in Lokyngton¹ as the right and inheritance of Agnes and into which John has not entry save by the intrusion which he made therein after the death of William Daniel to whom Adam Daniel the father of Agnes whose heiress she is, demised them for the life of William. And whereupon the same John of Hothum and Agnes by their attorney say that Adam the father etc. was seised of the tenements in his demesne as of fee and right in time of peace in the time of King Henry III, taking thereof the profits to the value etc., and from Adam descended the right to this Agnes who now demands together etc. as daughter and heiress and into which etc. and thereof he produces suit etc.

And John Daniel by John of Skelton his attorney comes and denies their right when etc. and says that John of Hothum and Agnes can claim no right in the tenements because he says that one Robert Daniel grandfather of Agnes was seised of the tenements, who enfeoffed thereof William Daniel the

¹ Lockington is about five miles to the north of Beverley.

Note from the Record (*continued*).

father of John Daniel whose heir he is to hold to William and his heirs of his body lawfully begotten; and he says that Adam the father of Agnes etc., when the tenements were in the seisin of William granted and with his charter confirmed them to William to hold to William and the heirs of his body issuing for ever etc. and bound himself and his heir to warranty etc. and he proffers a certain writing under the name of Adam which witnesses the aforesaid grant and confirmation. Whereupon he says that if he be impleaded by any other of those tenements, Agnes would be bound to warrant them to him. And he asks judgment etc.

And John of Hothum and Agnes say that that writing ought not to harm them, for they say that the writing is not the deed of Adam. And they ask that this may be enquired by [*the fourteen*] witnesses named in the writing and by the country. And John Daniel likewise.

Therefore the sheriff is ordered to cause to come here on the octave of St. Hilary the witness and besides them twelve etc. by whom etc. and who neither etc. to make recognition etc. because as well etc.

And be it known that the writing denied remains in the custody of J. Bacun the king's clerk etc.

PLACITA DE TERMINO SANCTI HILARII ANNO
REGNI REGIS EDWARDI FILII REGIS
EDWARDI QUARTO.

1. ANON.

I.¹

Monstravit de compoto ou le bref voleit qe le defendant fust resceivor de ses deners et des boefs a la vallaunce de xiiij marcs les queux il vendi et resceut les deners ; et le bref chalengé et agardé bon.

Un homme porta le *monstravit de compoto de tempore quo fuit receptor denariorum*, et counta q'il fut son recevour et receut x livres a marchander a son prou, et pur ceo atort qe la ou il fut son recevour etc. et receut vj livres de argent et vendi bestes a la value de iiij livres.²

Herle. Jugement de³ ceo⁴ counte qar il ad counté⁵ q'il fut son recevour de ces⁶ deners ; et pus dit q'il vendi ces bestes pur iiij livres, qe deit estre⁷ acounte de baillif. Jugement.

Berr. Il ad counté qe vous avez receu⁸ pur bestes venduz iiij livres, et ensi fuistis⁹ son recevour ; par qey responez outre.¹⁰

Herle. Statut ne veut mie qe homme seit attaché par son corps, si noun¹¹ la ou il est baillif a acounte rendre,¹² et cesti bref n'est mie mayntenu par statut. Jugement du bref.

*Wilby.*¹³ Westmouster secounde parle de *servientibus balliivis et quibuscunque receptoribus*, et ceo statut ad relacioun a ceo statut, qe¹⁴ dit *sicut in aliis statutis continetur*.

Par qey¹⁵ le bref fut agardé bon.

¹ From *R* compared with *C, P, Q*. The headnote is from *B*. ² *Monstravit de compoto* fut porté etc. Et dit q'il fut soun receyvour de x livres, *scil.* vj livres en deners ; et vendi bestez a la value de iiij livres, *C, Sim., P, Q*. ³ del, *C*, du, *Q*. ⁴ *Om.* ceo, *C, P, Q*. ⁵ *For* qar . . . counté, *subs.* q'il dit, *C, P, Q*. ⁶ *Om.* ces, *C, P, Q*. ⁷ *For* qe deit estre *subs.* qe est, *C, P, Q*. ⁸ receustez, *C, P, Q*. ⁹ *Om.* fuistis, *C, P, Q*. ¹⁰ *Om.* outre, *C, P, Q*. ¹¹ fors, *C, P, mes, Q*. ¹² *Om.* a acounte rendre, *C, P, Q*. ¹³ West, *C, P, Q*. ¹⁴ *sic C*, et, *P, Q*. ¹⁵ et, *C, P, Q*.

PLEAS OF THE TERM OF ST. HILARY IN THE
FOURTH YEAR OF KING EDWARD THE SON
OF KING EDWARD (A.D. 131⁰₁).

1. ANON.¹

I.

Monstravit de compoto. The writ said that the defendant was receiver of the plaintiff's money and of oxen to the value of fourteen marks, which he sold and for which he received the money. The writ was challenged and awarded good.

A man brought the *monstravit de compoto de tempore quo fuit receptor denariorum*, and counted that the defendant was his receiver, and received ten pounds to trade for his profit; and for this wrongly, because there where he was his receiver etc., and received six pounds of money, and sold beasts to the value of four pounds.²

Herle. Judgment of this count, for he has counted that the defendant was his receiver of his money; and then he says that the defendant sold his beasts for four pounds; and this ought to be [charged as] bailiff's account.

BEREFORD, C.J. He has counted that you have received four pounds for beasts sold, and so you were his receiver. Therefore answer further.

Herle. The statute [of Marlborough]³ does not say that a man should be attached by his body, except where he is a bailiff who has to render an account; and this writ is not supported by the statute. Judgment of the writ.

Willoughby. The statute⁴ of Westminster II. speaks *de serviutibus balliuis et quibuscunque receptoribus*, and this statute has relation to the statute [of Marlborough], for it says *sicut in aliis statutis continetur*.

Therefore the writ was awarded good.

¹ A somewhat similar case will be found among the reports of the year 2 Ed. II. See vol. ii. p. 34.

² The reporter here gives the words

of the plaintiff's count as uttered in court.

³ Stat. Marl. c. 23.

⁴ Stat. Westminster II. c. 11.

II.¹

Un Willam porta soun bref de *monstravit* vers Robert et counta q'atort ne luy rent acompte de temps q'il fuist soun resceivour de ses deners, *scil.* de xvij marcz tiel jour etc. a H. affaire sa purveyaunce, et boefs a la vaillaunce de xiiij marcz le quel il vendit et resceut les deners.

Ingh. Voilletz ceo counte ?

Hedon. Oil.

Herle. Jugement de ceo counte, qe la ou il dit q'il resceut ses deners et² en taunt le fet il resceyvour, et la ou il dist q'il resceut bienz³ a la vaillaunce de taunt etc. et² en tant le fait il baillif, et issint est soun counte nyent pursiwant. Jugement.

Et fuist agardé bon par Ber.

Herle. Unqore jugement du counte ; qar en sa demoustraunce il dit qe nous esteimes recevoir de ses deners a la vaillaunce de xvij marcz, et en la declaracioun il dit q'il vendi boefs a la vaillaunce de xiiij marcz. Et chescun bref d'acompte veot estre porté de chose q'est baillé a resceyvour ou a baillif, mes la ou il dit q'il lui bailla boefs et de ceo demaunde acompte des deners etc., et issint est soun counte nyent pursiwant. Jugement.

Ber. Yl ad counté qe vous vendistes les boefs et resceut xiiij marcz, et issint le counte bon ; par quei responez outre.

Herle. Nous demaundoms jugement de ceo bref, qar ceo bref est doné par statut, et statut ne doune mye resceivour etc. ne⁴ recoverir par ceo bref synoun vers baillif et noun pas vers resceyvour. Et soun bref veot *receptor denariorum*, a quele paroule le statut de Marlberge ne s'estent mye. Jugement.

Stanton. Le statut Westmuster ij les eide, qe dit *quibuscunque receptoribus*.

Et puis *Ber.* liust le statut, et fuist agardé qe ceo statut fuist garraunt a ceo bref. Et dit qe cest estatut ad relacioun al statut de Marlberge, et agarda le bref bon pur ceo qe teuz brezf avaunt ceux houres furent useez.

¹ From *B* collated with *G*.

² *Om.* et, *G*.

³ beenz, *G*.

⁴ *Om.* resceivour etc. ne, *G*.

II.¹

One William brought his writ of *monstravit* against Robert and counted that wrongly he rendered not account to him of the time when he was his receiver of his moneys, that is to say, of eighteen marks received on a certain day at H. for his purveyance, and of oxen which he sold to the value of fourteen marks and whereof he received the purchase money.

*Hengham.*² Will you hold to this count?

Hedon. Yes.

Herle. Judgment of this count, for here he says that he received his moneys and thereby makes him his receiver, and there he says that he received goods to the value of so much etc., and thereby makes him his bailiff, and so his count is not consistent. Judgment.

It was awarded good by BEREฟอร์ด, C.J.

Herle. Still we ask judgment of the count; for in his demonstrance he says that we were receivers of his moneys to the value of eighteen marks, and in his declaration³ he says that he sold oxen to the value of fourteen marks. And every writ of account should be brought of a thing which is delivered to a receiver or a bailiff; but here he says that he delivered to him oxen and thereon demands account of moneys, and so his count is not consistent. Judgment.

BEREฟอร์ด, C.J. He has counted that you sold the oxen, and received fourteen marks, and so the count is good. Therefore answer further.

Herle. We ask judgment of this writ, for it is given by the statute [of Marlborough], and that statute does not speak of receiver, nor of recovery by the writ except against bailiffs; and his writ says *receptor denariorum*, to which words the statute of Marlborough does not extend. Judgment.

STANTON, J. The statute of Westminster II. which says *quibuscumque receptoribus* aids them.

And then BEREฟอร์ด, C.J., read the statute, and it was awarded that this statute was a warrant for the writ. And he said that this statute of Westminster II. had relation to the statute of Marlborough; and awarded the writ good on the ground that such writs had been used heretofore.

¹ This version appears in the Old Edition on p. 94.

² *Hengham* and *Ingham* appear to be one and the same person.

³ The demonstrance seems to mean

here the opening words of the plaintiff's statement which follow the writ word by word, and the declaration the latter part of his statement, in which he gives particulars. See vol. iv. p. xxxvii.

2. STUREYE *v.* SHOTRIK.I.¹

[ou il] fu dit q'il avoit terres et tenemenz etc. et fut replié encontre ly, [qe ce]o fut en les v [port]z et par tant nent [justi]ciable; et non allocabatur.

Un A. porta le *monstravit de compoto*.

Denum. Il ad terres et tenemenz en mesme le conté par les queux il put estre justicé et destreint a rendre aconté. Prest etc. Jugement du bref.

Pass. Il n'ad terres etc. fors deinz les v portz qe sont hors de poer du visconte; et issi nent justiciable ceynz. Prest etc.

Ber. Nous n'enquerroms ja le quel il eit terres en les v portz ou noun qe ceo ne serreit issu en ceo pleé. Et pur ceo il vous covent a dire s'il eit terres et tenemenz par ont il put estre destreint ou ne mye.

Pass. Il n'ad terres etc. par queux il put estre destreint, prest etc.

Et alii econtra. Et sic ad patriam etc.

II.²

En monstravit de compoto.

Den. Il ad terres suffisautes en mesme le counté.

Pass. Ses terres sunt denz les v portes ou le viconte ne put destreindre.

Ber. L'issu covent estre pris sur le bref, s'il ad terres par queus estre destreint sanz parler des portz ou noun.³ Et dites ceo en evidence.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 2, Kent.

Adam Shotrik was attached by his body to answer Robert of Stureye on a plea that he render to him his rightful account of the time when he was the receiver of Robert's money etc. And whereupon Robert by Richard of Chelsesfeld his attorney complains that whereas Adam was receiver of

¹ From *D.* Words in brackets in the headnote are supplied to replace others cut from the margin. ² From *X.* ³ The abbreviated words *s^c f^t*, which are of doubtful import in this context, are here written in the MS.

2. STUREYE *v.* SHOTRIK.¹

I.

In a case of account the defendant said that he had lands and tenements by which he might be distrained. The plaintiff wished to reply that they were situate within the liberty of the Cinque Ports, and therefore were outside the power of the sheriff of Kent. He was only allowed to reply that the defendant had not lands by which he could be distrained.

One A. brought the *monstravit de compoto*.

Denham. He has lands and tenements in the same county by which he can be justiced and distrained to render an account. Ready etc. Judgment of the writ.

Passeley. He has not lands etc. except within the Cinque Ports, which are outside the power of the sheriff; and so he is not justiciable here. Ready etc.

BEREFORD, C.J. We will not enquire whether he has lands in the Cinque Ports or not, for that would not be an issue in this plea. Therefore you must say whether he has or has not lands or tenements whereby he can be distrained.

Passeley. He has not lands whereby he can be distrained. Ready etc.

And the others to the contrary; and so to the country etc.

II.

A writ of *monstravit de compoto*.

Denham. He has sufficient lands in the same county.

Passeley. His lands are within the Cinque Ports, where the sheriff cannot distrain.

BEREFORD, C.J. The issue should be taken upon the writ, 'if he has lands by which he can be distrained or has not,' without speaking of the Ports; and say this in the evidence.²

Note from the Record (*continued*).

Robert's money from [1 June 1302] the morrow of the Ascension 30 Ed. I. for two years following, receiving thirty pounds from the same during that time at Stureye, Westbere and Wykham, Adam lurking in the county of Kent so that he cannot be found has hitherto refused to render his account of the money to Robert and still refuses. Whereupon he says that he is

¹ The proper names are taken from the record.

² See note 3 opposite. The abbreviated words are probably *sic fuit*.

Note from the Record (*continued*).

injured and has damage to the value of one hundred shillings ; and thereof he brings suit etc.

And Adam comes and defends tort and force etc. when etc. and says that he ought not to answer him thereof on this writ, for he says that such a writ avails plaintiffs against their bailiffs or receivers of money etc. who have not lands or tenements by which they can be distrained etc. And he says that he has lands and tenements at Fordwich¹ in the county of Kent by which he can be distrained to render his account if account to him he ought to render ; and this he is ready to aver. Whereupon he asks judgment of the writ etc.

3. ODYHAM *v.* EYLBARN.²

Ou le fet l'auncestre ne barre mie sun heir.

Nota qe en un bref d'ael *Grantebrigge* pur le tenant mist avant la chartre l'ael e dist qe l'ael le lessa ceux tenemenz e obliga lui e ses heirs a la garantie. E si nous fuissoms enpledez de un estrange, vous nous serriez lyé a la garantie. Jugement, si encontre ceo fet poussez accion avoir.

Hedon. Nostre ael murust seisi, prest etc.

Grant. Est ceo le fet vostre auncestre ?

Hedon. Jeo n'ay mestier a conustre ne dedire ; qar ceo est un bref de possesioun ; e jeo voille averer qe mon ael devia seisi.

Ber. Il esta mult bien ensemble qe son auncestre fist ceo fet, e ja dumeinz devia seisi, par quei nous agardoms qe vous diez altre chose.

Grantebrig. Vostre ael ne murust pas seisi etc. prest etc.

Et alii contrarium.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 218d, Middlesex.

John Odyham and Alice his wife by their attorney demand against David Eylbarn of Enefeld one messuage nine acres and one rood of land and one acre and a half of meadow in Enefeld, and against Robert Reyner one acre of land in the same vill, and against Nicholas le White and Agnes his wife one acre of land in the same vill, of which William Dauby the grandfather of Alice whose heiress she is, was seised in his demesne as of fee on the day when he died etc.

¹ The borough of Fordwich was a limb or member of Sandwich and as such subject to the jurisdiction of the warden of the Cinque Ports. ² From Y (fo. 52 v°).

Note from the Record (*continued*).

And Robert says that Adam has not sufficient lands or tenements in the county whereby he can be distrained to render his account, and he asks that this may be enquired by the country.

Issue is joined and a *uenire facias* awarded here for the octave of Trinity; and thereupon [five persons] became mainperners to have the body of Adam here at the aforesaid term, and at each day of the plea, until it should happen that the jury be taken and judgment thereof rendered, to wit, body for body.

3. ODYHAM *v.* EYLBARN.¹

On a writ of ael the tenant cannot put forward a deed by the ancestor in bar of the action, if the demandant is ready to aver that the ancestor died seised.

On a writ of ael *Cambridge* on behalf of the tenant put forward the charter of the grandfather, and said that the grandfather demised these tenements to him, and bound himself and his heirs to warranty. And if we were impleaded by a stranger, you would be bound to warrant to us. Judgment, if against this deed you can have an action.

Hedon. Our grandfather died seised, ready etc.

Cambridge. Is this your ancestor's deed?

Hedon. I have no need to acknowledge it, or to deny it; for this is a writ of possession, and I wish to aver that my grandfather died seised.

BEREFORD, C.J. It is quite consistent that his ancestor made this deed, and nevertheless died seised, wherefore we award that you say something else.

Cambridge. Your grandfather did not die seised etc. Ready etc. And the others to the contrary.

Note from the Record (*continued*).

And David and the others come by their attorney and deny their right when etc. And they deny that William the grandfather etc. died seised of the tenements in his demesne as of fee as John and Alice say; and of this they put themselves upon the country.

Issue is joined and a *uenire facias* awarded here for the octave of Trinity.

¹ The proper names are taken from the record.

4. HALUERYATE v. GERBERGE.¹

Nota qe eodem die un A. demanda vers B. ij molins v acres de terre iij acres de pree c. acres de marreys iij acres de juncherye e xl souz de rente en les villes de A. B. e C.

Grantebrig. dist les espleez prist com en tolnu de molin en bleez en herbages en ros en leche ² en fower des turbes e en rentes etc. e en altre manere issue de molin terre pree marreys rente etc.

Hengham defendit e dit qe a cestui bref ne deit il estre respondu, qar quant a c. acres de marreys nous dioms qe le marreys est en la ville de P. e nent en A., B. ne en C. com le bref suppose.

Grantebrigge non potuit hoc dedicere.

Ideo cassatur breue etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 238, Norfolk.

William of Halueryate by John of Blonuill' his attorney demands against William Gerberge and Joan his wife one mill and sixty-two acres of land and three acres and a half of meadow five acres of pasture one hundred and forty acres of marsh ten acres of reeds (*iuncarie*) six acres of turbary and thirty-two shillings and two pence of rent in Halueryate Wykhampton Mouton Cantele Tunstal and Upton³ of which William of Halueryate the grandfather of William of Halueryate whose heir he is, was seised in his demesne as of fee on the day of his death etc.

And William Gerberge and Joan by William Tebaud their attorney come. And they say that they ought not to answer him thereof on this

5. STRATFORD v. BIRCHE.⁴

Ou trauers su la quantité des services fust receu⁵ en cestui bref.

Un A. porta sun *cessavit* vers B. e dist q'il tent de luy une carué de terre par les services de v souz e vj deners, en fessant les services il ad cessé par ij anz.

W. Denhom. La ou il dist qe nous tenoms de lui par les services v souz e vj deners, nous tenoms de lui par les services de iij souz e vj

¹ From Y (fo. 52 v°). ² The words 'anglice red, anglice seg' are interlineated here. ³ Halvergate, Wickhampton, Moulton, Cantley Tunstall and Acley are all near Great Yarmouth. ⁴ From Y (fo. 120 v°). ⁵ Apparently an error for 'refusé.'

4. HALUERYATE *v.* GERBERGE.¹

[A writ of ael quashed on the ground that part of the property claimed was not situate in one of the three villis named in the writ.]

On the same day one A. demanded against B. two mills, five acres of land, three acres of meadow, one hundred acres of marsh, four acres of reeds, and forty shillings of rent in the villis of A., B., and C.

Cambridge said 'Took the esplees as in toll of mill, in corn, in grasses, in reeds, in sedges, in digging turfs, and in rents and in other kinds of issue of mill, land, meadow, marsh, rent etc.'

Hengham defended and said that the plaintiff ought not to be answered on this writ, for as to one hundred acres of marsh we say that the marsh is in the vill of P. and not in A., B., nor C., as the writ supposes.

Cambridge could not deny this.

Therefore the writ was quashed.

Note from the Record (*continued*).

writ because they say that the six acres of turbary which William of Halueryate demands and which he put in their view etc. are not in any vill in the writ contained but are in the vill of Ockle. And they tender (*pretendunt*) to aver this etc. Whereupon they ask judgment of the writ etc. And William of Halueryate cannot deny this, therefore it is awarded that William Gerberge and Joan go thereof without day; and that William of Halueryate be in mercy for his false claim etc.²

5. STRATFORD *v.* BIRCHE.¹

On a writ of *cessavit* the tenant was not allowed to aver that he held by other services of which the demandant was then seised.³

One A. brought his writ of *cessavit* against B. and said that B. held of him a carucate of land by the service of five shillings and sixpence, and that he had ceased to do the services for two years.

W. Denham. Where he says that we hold of him by the service of five shillings and sixpence [we say that] we hold of him by the service of three shillings and [nine]pence, of which services he is seised

¹ The proper names are taken from term, 5 Edw. II. (*De Banco Rolls*, No. 189, r. 78).

² The demandants brought another writ to recover the property in Mich.

³ The French headnote is not consistent with the report.

deners des queux services il est seisi hui ceo jour, e demandoms jugement. Et s'il le voet dedire prest etc.

Grantebrigg. Q'il tient de nous par les services de v souz e vj deners e nous nent seisi, prest etc.

Bereford et Herry refuseront ceo travers etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 91d, Essex.

The abbot of Stratford by William of Finchingfeld his attorney demands against John of Briche of Little Burghstede twelve acres of land with the appurtenances in Little Burghstede¹ as his right which John holds of him by certain services and which ought to revert to the abbot by the form of the statute² of the common council of the king's realm provided, on the ground that John from doing the services for two years has now ceased etc. And whereupon the abbot says that whereas John held of him the aforesaid land by fealty and the service of five shillings and sixpence a year of which services the abbot was seised by the hands of John in time of peace in time of king Edward I., taking thereof the profits to the value etc. and which to the abbot ought to revert by the form of the statute etc. And thereof he brings suit etc.

6. SPEYE v. LEDET.³

Ou dette fut due a iij e les deux demandent la dette sanz le terce etc.

W. de la Spade e Walter de la Spey marchauntz porterent lour ref de dette vers divers persones qe vindrent en court.

Denham defendit. Quei avez de la dette ?

Roystone. Veez cy vostre fait. E le fet fut qe A., B., e C. granterent estre tenuz a William de la Spade e Water de la Spey e a Jon de la Slate en C. livres issi qe chescun fut obligé en le tut a paier a eux a certain terme etc. ou a un de eux.

Denham. Vous avez ben oy coment W. e W. unt counté ceste dette estre due a eux deux ; e l'escrit veut qe la dette est duwe a troys. Et demandoms jugement de la variaunce entre lour counte e lor specialté.

Roystone. Lour acquittance ust esteint ceste dette saunz fere

¹ Little Burstead is near Brentwood. ² Stat. Westm. II, 13 Edw. I. c. 21.

³ From Y (fo. 243 r^o).

this very day. We ask judgment, and if he wishes to deny this, ready are we etc.

Cambridge. He holds of us by the service of five shillings and sixpence; and that we are not seised, ready are we etc.

BEREFORD, C.J., and STANTON, J., refused Denham's traverse.

Note from the Record (*continued*).

And John comes and denies his right when etc. and well he acknowledges that he holds the tenements of the abbot by fealty and the service of three shillings and nine pence only for all service, and as to that service he well denies that anything was arrear to the abbot on the day of the purchase of the writ etc. And this he is ready to aver etc. Whereupon he asks judgment etc.

And the abbot says that John holds the tenements of him by fealty and the service of five shillings and sixpence a year etc. and that John from doing those services for two years before the day of the purchase of the writ, etc. to wit, before the eleventh day of April [1310] 3 Ed. II., has ceased. And he asks that this may be enquired by the country.

Issue is joined and a *venire facias* awarded here for the morrow of St. John the Baptist.

6. SPEYE *v.* LEDET.¹

A debt was due to three by several, each of whom was bound in the whole for payment to the three or one of them. It is doubtful whether two of the three can sue.

[Nicholas of Speye and Gerard de la Sclate], merchants, brought their writ of debt against divers persons who came into court.

Denham defended. What have you of the debt?

Royston. See here your deed. And the deed was that [Walter John] and [Henry] granted that they were holden to [Nicholas of Speye and Gerard de la Sclate and another²] in one hundred pounds, so that each one was bound in the whole for payment to them at a certain term etc., or to one of them.

Denham. You have heard how [Nicholas and Gerard] have counted that this debt is due to those two, and the writing says that the debt is due to three, and we ask judgment of the variance between their count and their specialty.

Royston. Their acquittance would have extinguished this debt

¹ The proper names are taken from the record.

² The name of the third merchant is not mentioned in the record.

mencioun de Jon de la Slate ; pur quei ne poent il sanz Jon user ceste accioun ?

Ber. Si joe deive dette a plusurs e joe usse acquitaunce de un, assez ne soffireit a esteindre la dette. Mès en vostre escrit sont deux choses, scilicet, qe la dette est due a eux iij, e qe la dette put estre païé a un, dont l'aquitaunce refert a cele parole qe la paiement put estre fait a un, mès cele parole due a iij en comune refert al accioun. Veez ore si cest accioun en commoun put estre usé par W. e W. entrelassant Jon, *quasi diceret*, noun.

Et sic ad iudicium.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 133, Essex.

Nicholas of Speye and Gerard de la Slate merchants of Luca offered themselves the fourth day against Walter Ledet' of Rothyng' Berners John of Foubrigge of Godestre and Henry le Porter of Stebbyngg' on a plea that each one of them Walter and John render to them ten pounds, and on a plea that Henry render to them twenty pounds, which he owes to them and unlawfully detains etc. And they did not come, and the sheriff was ordered *sicut pluries* to distrain Walter and John, and *sicut pluries* that he fail not (*non omitteret*) on account of the liberty of the earl of Lancaster to distrain Henry by all his lands etc. And the sheriff now sends word that Walter is distrained by his chattels to the value of forty pence, and not one whit

7. BEREWYK *v.* BREMBRE.

I.¹

On dette fut conu par un des dettours, mes fut en suspense par la reson d'il autre dettur etc.

Un Alice porta sun bref de dette vers B. e C. de xl livres.

Lauf. counta qe atort ly detint etc. e mist avant fet qe tesmoigne qe eux furent jointement obligé a la dette. B. vint en court en propre persone e demandé ly fut, cy cco fut son fet. Il dit qe oil, e pria grace des damages. C. respondi par attorné e dit q'ele fut covert de baroun jour de cesti bref purchacé e uncore est.

Hervi. Quei ad il a noun ?¹

¹ From Y (fo. 244 r^o).

without making mention of the [third creditor]. Why cannot they use this action without him?

BEREFORD, C.J. If I owed a debt to several and I had an acquittance from one, it would not be enough to extinguish the debt. But in your writing there are two things, to wit, that the debt is due to three of them, and that the debt can be paid to one of them; therefore the acquittance has reference to the clause that payment can be made to one. But this clause due to three in common has reference to the action. Do you think now that this action in common can be used in common by [Nicholas and Gerard] omitting [the third creditor]? I think not.

And so to judgment.

Note from the Record (*continued*).

the less [*four named persons*] mainprized him; and John is distrained by his chattels to the value of twenty shillings, and not one whit the less [*four named persons*] mainprized him; and Henry is distrained by his chattels to the value of half a mark, and not one whit the less [*four named persons*] mainprized him, therefore they are in mercy; and the sheriff is ordered *sicut pluries* to distrain them by all their lands etc. and that of the issues etc. and that he have their bodies here three weeks after Easter. (By H. DE SCROP) And let the sheriff be etc.

7. BEREWYK *v.* BREMBRE.¹

I.

A writ of debt was brought against two. One defendant came and acknowledged the debt. The other came and said that on the day when the writ was purchased the plaintiff was covert. Issue was joined on the question of coverture, and execution against the debtor who had acknowledged was suspended.

One Alice brought her writ of debt against B. and C. of forty pounds.

Laufare counted that wrongly had they detained from her etc. and put forward a deed which witnesses that they were jointly bound for the debt. B. came into court in his own person, and he was asked if it were his deed. He said yes, and asked grace with respect to damages. C. answered by attorney and said that the plaintiff was covert on the day when the writ was purchased, and still was so.

STANTON, J. What is the husband's name?

¹ The proper names are from the record. This case is Fitz. *Jugement* (fo. 86, case 229).

Hedon. W. de E. qe la esposa a N. en le counté de Salusbure. E demandoms jugement de cesti bref; e si Alice le veut dedire, prest etc.

Lauj. Nous prioms execucion de la moitié e nos damages.

Hervi. Attendez *Ber.*

E puis *Hervi* rehercea tote la parole a *Ber.* qe dit, Meschaunce aveigne a vos covenautz; il encombrent la court.

E puis Sire *Hervi* dit q'il vit en tens Sire *Jon de Metyngham* qe le tenant fit deus attornés. L'un vint e ren dist; l'autre attorné le dedist; e puis fit faire venir le tenant en propre persone.

Ber. Ceo fut maufet; issi ne froms nous my, qar nous enqueroms si ele seit covert ou noun, e tant dementers demorra le execucion vers cely qe reconust en suspense etc. *Et sic fuit.*

II.¹

Un femme porta bref de dette vers ij joyntement e demaunda L. livres.

Ruston. Quei avez de la dette?

Lamf. Veyez ci vostre fet.

Ruston (pur le un). Nous ne pooms dedire le fet.

Migg. (pur Thomas). Ele ne deit estre respondu a ceti bref, qar ele est coverte de baroun e fut le jour du bref purchacé, nomement de un F. en le counté de Salop.

Lamf. Sole, prest etc. E prioms pays de Londres ou ele est receaunt e ad esté touz ces x aunz.

Migg. Nous voloms averrer nostre excepcioun, par quei vous averez pays de Salop.

Herry. Quey dites vous des damages vers celi qi ad conu?

Lamf. Soit a voz agardes e a voz descressiouns etc.

E pur le cónisaunce l'autre fut agardé q'il recovereit la moyté etc.

III.²

Un A. porta bref de dette vers ij qe furent joynt oblige et il vindrent en court. Le un conust la dette [et] le fet. La femme dit qe al temps

¹ From P.

² From M.

Hedon. [Richard of Pontefract,] who married her at [Castle Pulverbatch,] in the county of [Salop]. We ask judgment of this writ. If Alice wishes to deny the marriage, ready etc.

Laufare. We ask execution as to a moiety and our damages.

STANTON, J. Wait till the Chief Justice comes.

Afterwards STANTON, J., rehearsed the whole cause to the Chief Justice, who said, May ill luck come to your covenants: they embarrass the court.

Afterwards STANTON, J., said that he had seen a tenant make two attorneys in the time of METINGHAM, J. One came and said nothing; the other denied [something;] and then the judge made the tenant come in his own person.

BEREFORD, C.J. That was a mistake. We will not do so; but we will enquire whether the woman was covert or not; meanwhile let execution against him who has acknowledged the deed remain in suspense etc. And so the matter stood.

II.

A woman brought a writ of debt against two jointly bound and demanded fifty pounds.

Royston. What have you of the debt?

Laufare. See here your deed.

Royston for one of them. We cannot deny the deed.

Miggeley for Thomas. She ought not to be answered on this writ, for she is covert with a husband, namely, one [Richard of Pontefract] of the county of Salop, and was so on the day when the writ was purchased.

Laufare. Sole she is, ready are we etc. And we pray a jury from London, where she is resident and has been all these ten years.

Miggeley. We wish to aver our exception, wherefore you must have a jury from Salop.

STANTON, J. What do you say about damages against the defendant who has acknowledged?

Laufare. Let it be as you award and decree etc.

And for the acknowledgment of the other debtor it was awarded that the plaintiff recover a moiety etc.

III.

One A. brought a writ of debt against two persons who were jointly bound. They came into court. One acknowledged the debt and the

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de bref purchacé, ele fut covert de baroun de un J. en tiel counté. A. tendi d'averrer qe noun, et pur la conissaunce l'autre, fut agardé q'il recovre la meyté etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 189, Middlesex.

Peter of Brembre, parson of the church of Northbury, and Richard of London, parson of the church of Cheselherst, were summoned to answer Joan of Berewyk on a plea that they render to her sixty marks which they owe to her and unlawfully detain etc. And whereupon Joan says that whereas Peter and Richard on 5 February 1 Ed. II. [1304] at London bound themselves to be holden to Joan in the aforesaid debt to be paid at Michaelmas then next following, Peter and Richard have hitherto refused to render the debt to Joan, and still refuse, whereupon she says that she is injured and has damage to the value of ten pounds, and thereof she brings suit etc. And she proffers a writing under the name of Peter and Richard which witnesses the debt etc.

And Peter by Henry of Solyhull his attorney and Richard by John Child his attorney come. And Richard by his attorney well grants the writing to be his deed etc. and that he is holden to Joan in the debt together with Peter etc.

8. ORMESBY *v.* LOVEDAY.¹

Ou divers dettes par divers contrats par divers feths sont dereignez par un bref de dette.

Willam de Ormesby e Alice sa femme porterent bref de dette vers Willam Loueday e dit qe atort ly detint xl livres e ix souz e viij deners e chateux a la vaillaunce de xl livres E pur ceo atort qe la ou tel jour tel an le dit W. graunta estre tenu a la dit Alice en xx livres e se obliga par son fet qe cy est. (Et mist le fet a la court a paier a tiel jour tel an prochein swiant.) Et ensement le dit W. graunta estre tenuz a la dit A. tiel jour tel an e se obliga en xx livres par un autre son fet qe cy est. (Et mist a la court a paier tiel jour tel an prochein swiant.) Et estre ceo le dit W. empromta de la dit A. lx souz e viij deners tel jour etc. a paier tel jour etc. Et estre ceo le dit W. graunta

¹ From Y (fo. 244 r°).

deed. The [other] said that at the time when the writ was purchased the plaintiff was covert of one J. in such a county. A. offered to aver that she was not covert, and for the acknowledgment of one defendant it was awarded that she recover a moiety.

Note from the Record (*continued*).

And Peter defends tort and force when etc. and says that he ought not to answer her thereof on this writ etc., for he says that Joan on the day when the writ was purchased, to wit 14 December 3 Ed. II. [1309], had a husband Richard of Pontefract by name then dwelling at Castel Puluerbach¹ in the county of Salop, to whom she was married at the church of St. Edith of the same town, and this he is ready to aver by the country of the county of Salop of the visne aforesaid etc.

And Joan says that she is sole etc. and was sole on the day of the purchase of the writ; and she asks that this may be enquired by the country; and Peter likewise. Therefore the sheriff of Salop is ordered to cause to come here a month from Easter, (by John of Benestede) twelve etc. by whom etc. and who neither etc. because as well etc.

The same day is given to Joan for hearing her judgment against Richard and likewise to Richard by his attorney here in the bench etc.

8. ORMESBY v. LOVEDAY.

A writ of debt may be brought to recover divers debts on divers contracts by divers deeds.

William of Ormesby and Alice his wife brought a writ of debt against William Loveday and said that he wrongly detained from them [sixty-eight marks] and [ten] pence and chattels to the value of [seventy] pounds; and for this wrongly, because on such a day in such a year the said William granted that he would be holden to the said Alice in [forty] pounds, and bound himself by his deed which is here. (And he put the deed before the court, by which he was to pay on such a day in such a year next following;) and the said William likewise granted that he would be holden to the said Alice on such a day and such a year, and bound himself [in eight marks and ten pence] by another deed which is here. (And he put the deed before the court by which he was to pay on such a day in such a year next following.) And besides this the said William borrowed from the said Alice [nine] shillings and [two] pence on such a day etc. to be paid on such a day etc.; and besides this the said William granted that he would be holden² to the said Alice

¹ Castle Pulverbatch is near Shrewsbury. ² This is an error. The record shows that there was no writing obligatory for the corn.

estre tenuz a la dit A. en xl quarters de furment pris de xx livres e en xl quarters de aveinis pris de x livres a payer tel jour etc. e a ceo fere leaument prit amain par quei les dyz W. Ormesby e A. sovent sont venuz a W. Loveday e l'ad prié q'il rendisit etc.

Jon Loveday defendi tort etc. e les damages; e quant a xl livres nous dioms qe accioun ne put ele avoir qar Alice en sa lige vevesté a nous fit acquittance par son fet qe cy est. (Et mist a la court.) Et quant a ix souz e viii deners e le furment e l'avein qe ren ne vous devoms, prest sumes a defendre par nostre lay.

Hengham. Nent nostre fet. E quant a remenant trovez plegges de la ley etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 126d, Cambridgeshire.

William Loueday in mercy for several defaults.

The same William was summoned to answer William of Ormesby and Sibil his wife on a plea that he render to them sixty-eight marks and ten shillings which he owes to them and unlawfully detains and chattels to the value of seventy marks which he unlawfully detains from them etc. And whereupon William of Ormesby and Sibil by Hugh of Depedale their attorney say that—whereas William Loueday on [30 May 1300] Whitmonday 28 Ed. I. at Elm¹ bound himself to be holden to Sibil in forty pounds sterling to be paid to her on Christmas Day then next following; and also on [29 August 1300] the Wednesday next after the feast of St. Bartholomew in the same year at Swafham by another writing bound himself to be holden to Sibil in eight marks and ten pence to be paid [2 Feb. 130¹] at the feast of the Purification of the Blessed Mary then next following and on the same Wednesday he borrowed from Sibil nine shillings and two pence and also sixty quarters of corn of the price of forty marks and sixty quarters of barley of the price of thirty marks to be paid to Sibil at the feast of the Purification—the same William Loueday the moneys and chattels hitherto has not rendered and still refuses to render. Whereupon they say that they are injured and have damages to the value of forty pounds, and thereof they produce suit etc. And they proffer two writings obligatory one of the forty pounds and the other of the eight marks and ten pence which in the form aforesaid witness etc.

And William Loueday by Ralph of Dokesworth his attorney comes and defends tort and force when etc. and says that he ought not to answer them thereof, because he says as to the forty pounds eight marks and ten pence of the debt, that Sibil in her liege widowhood by her writing remised to William Loueday every kind of action which she could have against him by reason of any deed issued (*editi*) by William to Sibil. And he proffers a certain writing under Sibil's name which witnesses this, of which the date is

¹ Elme is near Wisbeach.

in forty quarters of wheat of the price of twenty pounds and in forty quarters of oats of the price of ten pounds to be paid on such a day etc. And he undertook to do this loyally, whereupon the said William Ormesby and Alice had often come to William Loveday, and prayed him to render etc.

John Loveday defended tort and force etc. and the damages, and as to the forty pounds [eight marks and ten pence] we say that action she ought not to have; for in her liege widowhood she made to us an acquittance by her deed which is here. (And he put it before the court.) And as to the nine shillings and [two] pence and the wheat and the oats, we say that we owe you nothing; ready are we to deny it by our law.

Hengham. Not our deed; and as to the rest find pledges of your law etc.

Note from the Record (*continued*).

at Chaueleye¹ on [6 May 1307] Saturday the feast of St. John before the Latin Gate 35 Ed. I., whereupon he asks judgment etc.

And William of Ormesby and Sibil say that the writing ought not to hurt them in this behalf, because they say that the writing is not Sibil's deed, and they ask that this may be enquired by [*nine persons who are*] the witnesses named in the writing, and by the country. And William Loueday likewise. Therefore the sheriff is ordered to cause to come here on the quindene of Trinity the witnesses, and besides them twelve etc. by whom etc. because as well etc.

And be it known that the aforesaid writing which is denied remains in the custody of John Bacon. And at that day came the parties by their attorneys and the sheriff did not send his writ. Therefore as before the sheriff. . . .²

The same William Loueday as to the nine shillings and two pence and the chattels denies that he on the day and year aforesaid received those moneys or chattels from Sibil nor is he in any thing holden to her, and this he is ready to aver against them and their suit as the court shall award. Therefore it is ordered that he wage to them his law thereof twelfth handed etc. and that he come here with his law at the aforesaid term. Pledges of his law Peter of Dullingham and John of Ingham. And the attorney of William Loueday is told to cause his lord to come here at the aforesaid term in his own person etc.

Afterwards process being continued until the morrow of St. Martin, 5 Ed. II., the parties came here, and the same William Loueday made his law thereof. Therefore he is quit thereof.

And William of Ormesby and Sibil his wife take nothing by this default but be in mercy for their false claim etc.

¹ Now called Cheveley.

² Process is continued till the morrow of the Purification, 5 Ed. II., but no

further proceedings after that date are enrolled. See *De Banco Rolls*, No. 185, r. 182, and No. 187, r. 182.

9. ANON.¹I.²

De modo faciendi legem.

La ou un Willem porta son bref de dette vers un homme e sa femme de un contrat fait avant les esposales entre ly e la femme ; e puis le baron e la femme vindrent en court e gagerent la ley jointement qe tel contrat ne se prit mie entre eux solom ceo q'il suposent etc. Avoient jour a fere la ley ; a quel jour le baroun fit primes sa ley e sa femme apres³ ceo qe le contrat ne se prit avant les esposalles etc.

II.⁴

Dette ou le baroun et la femme firent lour ley, pur coe qe la prest se fist avaunt les esposailles.

Un home porta soun bref de dette vers un homme et sa femme qe gagerent lour lei qe rien ne lui devoyent. Et fuist la lei faite en ceste fourme. La femme tient sa mayn outre le lyvre et le baroun de sus le lyvre et fist la lei en soun noun et en le noun sa femme. Et fuist le cas qe la prest se fit a la femme tant come ele fuist sole et pur ceo myst ele la mayn outre le lyvre etc. Mes si la prest eust esté a la femme fet taunt come ele estoit coverte *secundum quorundam opinionem* ele n'eust pas tenu la mayn outre etc. ne le baroun n'eust pas fait la lei en soun noun et en le noun sa femme jointement etc., mes soulement en son noun demene.

10. WULGHES v. PEPARD.⁵

Ou il defailli de sa ley e pur ceo perdy par jugement etc.

Un A. porta soun bref de detenue de un livere le pris de C. souz vers Mestre Jon Pamppam e dit qe atort ly detint un livere le pris de C. souz a ces damages de x livres.

Mestre Jon defendi e dist qe nul livere etc. de ly ne tint e de ceo se joint sa ley e a ceo fere trova plegges a un certain jour. A qel jour Mestre Jon solempnement demaundé ne vint point.

¹ These two reports, though scarcely consistent with one another, perhaps relate to the same case. ² From Y (fo. 239 r^o). ³ Though not so expressed it is possible that the husband now made the law for himself and his wife in the manner described in the following report. The wife might be said to have made her law when the husband made it for her and himself jointly. ⁴ From B collated with G. ⁵ From Y (fo. 244 r^o).

9. ANON.

I.

How a husband and wife should make their law.

One William brought his writ of debt against a man and his wife on a contract made before the marriage between him and the wife. Then the husband and wife came into court and waged their law jointly that no such contract took place between them as the plaintiff supposed. They had a day for making the law. At that day the husband first made his law, and his wife afterwards, that the contract did not take place before the marriage etc.

II¹.

Debt, where the husband and wife made their law, because the loan was made before the marriage.

A man brought his writ of debt against a man and his wife, who waged their law that nothing did they owe him. The law was made in this form. The wife held her hand over the book, and the husband held his under the book and made the law in his own name and in the name of his wife. And the case was that the loan was made to the wife while she was sole, and therefore she put her hand over the book etc. But if the loan had been made to the wife while she was covert, in the opinion of some she would not have held her hand over the book etc.; nor would the husband have made the law in his own name and in that of his wife jointly, but in his own name only.

10. WULGHES *v.* PEPARD.²

A writ of detinue was brought for the recovery of a book of the price of five pounds. The court awarded that the plaintiff should recover a book of that value and ten pounds damages.

One [Robert] brought his writ of detinue of a book of the price of one hundred shillings against Master John [Pepard], and said that he unlawfully detained from him a book of the price of one hundred shillings to his damage of ten pounds.

Master John defended and said that no book etc. from him did he detain; and of this his law was joined; and he found pledges to make it on a certain day. At which day Master John was solemnly called, but did not come.

¹ This appears in the Old Edition at p. 95. For another report of this case see vol. vii. p. 48.

² The proper names are taken from the record.

Hervi. Si agard la court qe A. recovre une livre le pris de C. souz e ses damages de x livres e Mestre Jon en la mercy etc.

Notes from the Record.

I.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 214d, Stafford.

Master John Pepard was summoned to answer Robert of Wulghes clerk on a plea that he render to him a certain book of the price of one hundred shillings which he unlawfully detains from him etc. And whereupon Robert by Henry of Gurmundele his attorney says that—whereas on [22 July 1305] the Thursday next before the feast of St. James the Apostle 33 Edw. I. at Wlfamcoote¹ in the county of Warwick he delivered to Master John a certain book of his which is called Saintgrahel of the price of one hundred shillings to guard, and at Robert's will to redeliver to him etc.—Master John though he was often asked to deliver that book to him still detains and has always hitherto refused to deliver it and still refuses. Whereupon he says that he is injured and has damage to the value of ten pounds; and thereof he brings suit etc.

And Master John by Robert of Lychefeld his attorney comes and defends tort and force when etc. and well he denies that the book ever came into his custody, and that he detains from him the book as Robert asserts; and this he is ready to defend against him and his suit as the court shall award. Therefore it is awarded that he wage his law thereof to him twelfth handed

11. MONTFORT *v.* BASSET.²

Detencio cartarum.

Hauise qe fu femme J. Monfort, A. e B. executours du testament le dit Jon furent sumonez a respondre a W. de Montford clerk frere e heir le dit Jon pur³ eux lui destreindrent⁴ W.⁵ chartris, e noma les maners contenuz en les chartres e vous lettres⁶ conuencionale.

Denham. Veez si la dame, qe est venuz pur lui e pur les autres executours, qe prest est a rendre les chartres.

Hervi. Countez.

Denham. Ceo vous mostre etc.

¹ Wolfhamcote is on the border of Northamptonshire, near Braunston. ² From Y (fo. 221 r^o). The text is far from good. ³ Probably the words 'ceo qe' are here omitted. ⁴ An error for 'detindrent.' ⁵ Written instead of 'v' ('cinq'). ⁶ An error for 'une lettre.'

STANTON, J. The court awards that [Robert] recover a book of the price of one hundred shillings and his damages of ten pounds, and that Master John be in mercy etc.

Notes from the Record (*continued*).

etc. And let him come here with his law on the quindene of St. Hilary. Pledges of the law Robert of Lychfeld and Roger of Podymor of the same county. And the attorney of Master John is told that he cause his lord to come here in his own person at the aforesaid term etc.

Afterwards at that day came Robert by Henry his attorney, and offered himself on the fourth day against Master John on the aforesaid plea, and Master John did not come, and he had a day here at this day after he appeared in court, and he wagered his law to him thereof etc. as appears above etc. Therefore it is awarded that Robert recover against him the aforesaid book of the price aforesaid and his damages against him as undefended etc.; and that Master John be in mercy etc.

Damages ten pounds whereof forty shillings to the clerks.

II.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 1, Stafford.

Master John Pepard in mercy for unlawful detention against Robert of Wilghes on a plea of a book as appears in the term of St. Michael, roll 214.

11. MONTFORT *v.* BASSET.¹

On a writ of detinue of charters, one of the defendants comes into court and, before the plaintiff has counted, proffers the charters. The plaintiff is ordered to count. He then receives the charters. The defendants are not amerced.

Hawise the widow of John² de Montfort, [John] and [William,] the executors of the will of [William] de Montfort, were summoned to answer [Robert] Montfort, clerk, the brother and heir of [William,] for this that they detain from him five³ charters, and he named the manors contained in the charters, and one letter of covenant.

Denham. See, here is the lady. She has come on behalf of herself and the other executors and is ready to render the charters.

STANTON, J. Count.

Denham. This shows you etc.

¹ The proper names are taken from the record. If she were this name should be William.

² It is not stated in the record that Hawise was the widow of the testator.

³ See note 5 on opposite page.

Graunt. etc. Havise defend tort e force etc. e veez si les chartres.

Hervi a W. Sont cez les chartres qe vous demandez ?

[*Denham.*] Sire, oyl.

Hervi. Recevez les deperdeuz.¹ *Et sic fecerunt.*

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 52d, Sussex.

Hawise Basset executrix of the will of William de Montfort was summoned to answer Robert de Montfort clerk on a plea that she, together with John le Gest parson of the church of Bergham² and William of Preston coexecutor with Hawise of the will aforesaid, render to him five charters and a certain writing of covenant which she unlawfully detains from him etc. And whereupon Robert says that—whereas the five charters and writing of covenant (to wit, a charter made to Robert de Montfort and Peronelle his wife Robert's ancestors, under the name of one Walter of Dunstanhill concerning the manor of Bergham, and another under the name of king Hen. III. made to the aforesaid Robert de Montfort, the ancestor etc. for having warren in the same manor,³ and a third which Peter de Montfort made to Robert his brother, Robert's ancestor, concerning the manor of Rammeham, and two charters⁴ under the name of king Hen. III. to Peter de Montfort ancestor etc. which witness that king Henry for himself and his heirs granted to Peter that he might enclose his wood at Remeham,⁵ which is within the metes of the king's forest of Wyndesore, with a ditch and

12. YELVERTON *v.* YELVERTON.⁶

Ou le defendant se voleit alaer en une detenu de chartres e ne fu nient resceu *ut patet.*

Nota la ou *Migg.* counta en une detenu des chartres e en parclos de son counte dit 's'il voet dedire il en ad swyte bone' e ne dit mie en la presence de qi lui livra les chartres.

Hengham defendi etc. e rehersa le counte e dit la ou il unt counté q'il nous livra ses chartres a garder nous sumes prest a defendre q'il nous livra nule chartre a garder.

Mugg. Nous dioms qe nous vous liverames nos chartres a garder teu jour etc. en la presence A. J. e C.

¹ Perhaps 'de part d'eux' is intended. ² In Angmering, now called Barpham.

³ The charter was dated 12 April 1269 (*Calendar of Charter Rolls*, ii. 117).

⁴ These charters are not on the charter rolls.

⁵ Remenham on the Thames.

⁶ From Y (fo. 221 r°).

Cambridge etc. Hawise defends tort and force, and see here the charters.

STANTON, J. to *Denham*. Are these the charters which you demand?

Denham. Yes, sir.

STANTON, J. Receive them from her [on their behalf]; and so they did.

Note from the Record (*continued*).

a hedge and make a park thereof etc. and a certain writing of covenant made between Peter de Montfort and Robert his brother Robert's ancestor etc., by which Peter granted and demised his manor of Rameham etc. on condition that Robert the brother etc. would restore demise etc. all his land which he held and had of the gift of Sir Peter their father in the vill of Cotesmore¹ to the said Peter and his heirs, after the death of William de Montfort, Robert's brother whose heir he is etc.) came into the custody of Hawise and the other executors, etc.—Hawise together etc. has hitherto detained those writings from Robert and still detains and refuses to render them. Whereupon he says that he is injured and has damage to the value of twenty pounds etc.; and thereof he brings suit etc.²

And Hawise came, and proffered here the five charters and the writing of covenant and rendered them to Robert here in court. Therefore let Hawise and the other executors go quit thereof.

12. YELVERTON *v.* YELVERTON.³

In his count on a writ of detinue of charters the plaintiff omitted to state in whose presence he delivered the charters to the defendant. The latter wished to wage his law that they were not delivered to him, but was not allowed to do so.

Miggeley counted in a detinue of charters, and said at the close of his count, 'If he wish to deny it he has good suit,' and he did not say in whose presence he delivered the charters.

Hengham defended etc. and rehearsed the count, and said that 'whereas they have counted that he delivered his charters to us to guard, we are ready to deny that he delivered any charters to us to guard.'

Miggeley. We say that we delivered our charters to you to guard on such a day etc. in the presence of A., J., and C.

¹ Cottesmore in Rutland.

² The word 'cras' is written in the margin of the roll opposite the middle

of the count.

³ The proper names are taken from the record.

Hengham. A ceo n'avendrez mie ore, qar a ceo qe vous avez counté nous avoms defendu par nostre ley.

Mugg. Detenu de chartres si chesent mout en desheritance. Jugement si tiel accion deit estre trié par laiment.

Hengham. A la forme de vostre counte si prenoms nous nostre excepcion, qar ne pout nent estre notis au pais.

Hervi. Ne vous ad il dit en la presence A. J. e C. ?

Heng. Sire, il est venuz trop tard.

Hervi. Assez est il venuz a heure.

Ber. Volez le pais ou noun ?

Hengham. Si vous agardez.

Ber. Devoms nous fere un agard a chescon parole qe vous dites ? *quasi diceret*, non.

Hervi. Par le sanke qe dieu seigna qe si nous agardoms, nous vous agarderom noun defendu.

Hengham, qe nul chartre nous baillia, prest etc.

Et alii contrarium.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 20d, Norf.

William the son of John of Yeluerton is in mercy for several defaults.

The same William was summoned to answer Thomas of Yeluerton and Margaret the daughter of Richard of Yeluerton on a plea that he render to them two charters which he unjustly detains from them etc. And whereupon Thomas and Margaret by Roger Est the attorney of Thomas and guardian of Margaret say that whereas they on [23 May 1306] Monday in Whitsunweek 34 Edw. I. at Norwich delivered to William one charter (by which Richard of Yeluerton enfeoffed Thomas and Margaret of one messuage and nine acres of land in Yeluerton), and one other charter (by which Richard enfeoffed Thomas and Margaret of half an acre of meadow and half an acre of wood and eight shillings of rent in the same vill) to keep

13. TALEBOT v. LANCASTER.¹

Ou nent resteant q'ele prist sun [seisine] pus la confeccioun de la chartre le roy, dit fut par la cort q'ele suisit au rey, car l'eide fu granté etc.

Isabel ke fu femme Johan Talbot porta sun bref de dowere vers Henri de Lancastre e demanda la terce partie del maner de C. del dowement Johan sun baroun.

¹ From Y (fo. 142 r°).

Hengham. To that you will not come now, for in answer to what you have counted we have defended by our law.

Miggeley. Detinue of charters is much in the nature of disinheritance. Judgment if such an action should be tried by wager of law.

Hengham. We take our exception to the form of your count, for [what you have counted] cannot be within the knowledge of the country.

STANTON, J. Has he not said in the presence of A., J., and C.?

Hengham. Sir, he has come to that too late.

STANTON, J. He has come to it in time enough.

BEREFORD, C.J. Will you have a jury or not?

Hengham. If you award it.

BEREFORD, C.J. Ought we to make an award on every word you say, *meaning*, No?

STANTON, J. By the blood which God shed if we make an award, we will award you undefended.

Hengham. Ready are we etc. that he has delivered to us any charter.

And the others to the contrary.

Note from the Record (*continued*).

and at the will of Thomas and Margaret to redeliver the same, William, although frequently requested to render the charters to them, these charters has hitherto from them detained and still refuses to render them. Whereupon they say that they are injured and have damage to the value of twenty pounds and thereof bring they suit etc.

And William by John Tweyt his attorney comes and thereupon a day is given them here in the octave of the Holy Trinity at the prayer of the parties without essoign.

13. TALEBOT *v.* LANCASTER.¹

To a writ of dower the tenant said that the king had by his charter granted the tenements in demand to his father with remainder to himself and the heirs of his body, with an ultimate remainder to the king. The widow replied that her husband was seised after the date of the charter. She was ordered to make suit to the king.

[Sarah] the widow of [Richard] Talebot brought her writ of dower against Henry of Lancaster, and demanded the third part of the manor of [Rodley] of the endowment of [Richard] her husband.

¹ The proper names are taken from the record.

Herle. Dowere de ceo maner ne puet ele demander, car nous vous dioms qe le roi Edward pere nostre seignur le roi etc. dona ceu maner a Edmund sun frere a terme de sa vie e qe apres sun deces qe les tenemenz remeindrènt a cestui Henri e ces heirs¹ par ceste chartre. (Et mist avant la chartre a la court qe ceo testmoigna.)

Denham. Nous dioms qe pus la date de cele chartre nostre baroun seisi en son demeine com de fee, e demandoms jugement si chartre le roi de eygné temps de la seisine nostre baroun nous de nostre dowere deive barrer.

Hervi. Coment futes vous seisi?

L'atturné. Sire, du doun Sire Edmund.

Ber. Vostre reconissance si est pur eux.

Denham. Si Henri fust a son bref de forme de doun, nent resteant la chartre le roi, si prioms avoir nostre response, com alleger quiteclamance ou altre chose ke nous purreit valer, mes desicom nous sumes prest del averer qe pus la confeccion de cele chartre nostre baroun seisi en son demeine com de fee e du doun Sire Edmund.

Herle. Nous dioms qe Sire Edmund ne oust rien en le maner qe terme de vie par my la forme e de cel estat murust seisi, e prest del averer.

Hervi dit a l'atturné. Dites a vostre dame q'ele suye au roi, car nous ne pooms autre chose faire tanqe le roi nous mande sa volenté etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 164d, Gloucester.

Sarah the widow of Richard Talebot by her attorney demands against Henry of Lancastre the third part of the manor of Rodleye² as her dower etc.

And Henry comes by his attorney, and says that the manor was in the seisin of king Ed. I. who gave it to Edmund his brother to hold for all Edmund's life of the same king Edward and his heirs so that after the decease of Edmund the manor should remain to Henry [his son] and the heirs begotten of the body of Henry for ever to hold of the same king and his heirs etc.; and if it should happen that Henry died without an heir of his body etc. the manor should remain to one Thomas the son of Edmund and the heirs of the body of Thomas etc.; and if Thomas died without an heir of his body etc. then the manor should remain to one John the son of Edmund and the heirs of his body etc.; and if Henry Thomas and John died without heirs of their bodies (*de se*), the manor should remain to the other heirs begotten of the body of Edmund for ever etc.; and if Edmund Henry

¹ In actual fact Henry had an estate tail only.

² Rodley on Severn.

Herle. She cannot demand dower of this manor, for we tell you that King Edward I., father of our lord the King etc., gave it by this charter to Edmund his brother for the term of his life, so that after his decease the tenements should remain to Henry and his heirs. (And he put before the court the charter, which witnessed this.)

Denham. We say that after the date of this charter our husband was seised in his demesne as of fee, and we ask judgment if the king's charter of an earlier date than our husband's seisin ought to bar us of our dower.

STANTON, J. How were you seised?

The Attorney. By the gift of Sir Edmund, sir.

BEREFORD, C.J. Your acknowledgment is for their side.

*Denham.*¹ If Henry were at his writ of formedon [it would be so]. Notwithstanding the king's charter we pray to have our answer, as an allegation of a quit-claim or something else which might affect us, since we are ready to aver that after the making of this charter our husband was seised in his demesne as of fee by the gift of Sir Edmund.

Herle. We say that Sir Edmund had nothing in the manor save term of life by the form [of the gift], and died seised of that estate. This we are ready to aver.

STANTON, J., said to the attorney, 'Tell your lady to make suit to the king, for we can do nothing more until the king sends us his pleasure' etc.

Note from the Record (*continued*).

Thomas and John or the other heirs begotten of the body of Edmund should die without heirs of their bodies, the manor should revert entirely to king Edward I. and his heirs etc. And he proffers the charter² of Edward I. which witnesses this etc. Whereupon he says that he himself holds the manor after Edmund's death in the form aforesaid; and he says that he ought not to answer thereof without the king etc.

And Sarah says that she ought not to be retarded by that charter from attaining (*consequenda*) her dower etc.; for she says that Edmund the brother of king Edward I. gave the manor to Richard sometime her husband, to hold to Richard and his heirs etc.; by which gift Richard was seised of the manor in his demesne as of fee etc. so that he could endow her; and this she is ready to aver etc.

A day is given them here a month from Easter in the same state as now etc. and meanwhile let the matter be discussed with the king etc.

¹ The correct translation of this speech is doubtful. 1292 (*Calendar of Charter Rolls*, ii. 423).

² The charter is dated 28 August

Note from the Record (*continued*).

Afterwards at that day Henry's attorney caused himself to be essoigned against her of the plea aforesaid and he had a day by his essoignor here at this day, to wit the morrow of St. John etc. And now came the parties by their attorneys; and a day is given them here, three weeks from Michaelmas in the same state as now etc.; and meanwhile let the matter be discussed with the king etc.

14. CHALONER *v.* CONDUIT.¹

Ou enfant dedenz age fut vouché com homme de plein age, e pur ceo del age sunt descenduz en pais apres q'il fut veu de court, ou dit fut qe le tenant quant il voucha n'ad mie mester sun estat moustrer; mes quant le garant vient en court moustre donqe sun estat.

Cristiane ke fu femme Johan le Challounner porta sun bref de dower vers N. N. voucha a garant T. le fiz Johan le Challounner qe deit estre sommoné en le conté de Essex. T. vient en court.

Hengham. Par quei le vouchez vous?

Hunt. Nous dioms qe Johan pere T. dona ceux tenemenz a Henri de C. e obliga lui e ces heirs a la garant H. e ces heirs e ces assignez, le quel H. nous feffa e obligea lui e ces heirs etc.; e veez icy le fet son auncestre. (Et mist avant la chartre del feffement e la chartre q'il fust assigné.)

Hengham. Et nous jugement desicom il nous ad vouché simplement sanz faire mencion de sun estat; e ore nous lier a la garant etc.

Huntingdon. Quant nous vouchames, nous n'avioms mie mestier de faire mencion de nostre estat, car ore quant nous vous devom lier a la garant, mestier nous est a vous moustrer nostre estat. Et demandoms jugement si vous nous ne devez garranter.

Hervi a Hengham. Dites autre chose, qar assez sunt il venuz a heure a vous moustrer lour estat, *scilicet*, quant il vous velint lier a la garant.

Hengham. Garanter ne devons qar il nous ont vouché com homme de plein age e nous sumes de deinz age. Jugement; e prioms q'il soit veu de cort. E pus fut veu de court.

¹ From Y (fo. 142 v°).

Note from the Record (*continued*).

Afterwards at that day came the parties by their attorneys etc. and a day is given them here three weeks after Easter at the prayer of the parties on the ground that the matter has not yet been discussed; therefore let the matter meanwhile be discussed with the king etc.

14. CHALONER *v.* CONDUIT.¹

On a writ of dower the tenant vouched to warranty, and the warrant vouched the heir, who came and said that though vouched as of full age he was an infant. He also said that the first vouchee vouched him simply, and not as an assign of one to whom the husband had granted the tenements. After an adjournment the court awarded that the widow should not be delayed from recovering her dower.

Christian the widow of John le Chaloner brought her writ of dower against [Geoffrey²]. He vouched John the son of John le Chaloner to warranty, who was summoned in the county of Essex. [John] then came into court.

Hengham. By what do you vouch him?

Huntingdon. We say that John the father of [John] gave these tenements to [John of Hatfeld] and bound himself and his heirs to warrant them to [John of Hatfeld,] his heirs and assigns. This [John of Hatfeld] enfeoffed us and bound himself and his heirs etc.; and see here the deed of his ancestor. (And he put forward the charter of the feoffment, and the charter that he should be an assign.)

Hengham. We ask judgment, on the ground that he has vouched us simply without mentioning his estate, and [they wish] now to bind us to the warranty.

Huntingdon. When we vouched we had no need to mention our estate; for it is now, when we have to bind you to the warranty, that we must show it you. And we ask judgment, if you ought not to warrant to us.

STANTON, J., to *Hengham.* Say something else, for they have come in time enough to show you their estate—that is to say, at the time when they wish to bind you to the warranty.

Hengham. We ought not to warrant, for they have vouched us as a man of full age, and we are within age. We ask judgment and we pray that our client be seen in court. (And then he was seen by the court.)

¹ The proper names are taken from the record. The writ was brought against a lady who vouched Geoffrey. See the note

² The report is not quite correct. from the record.

Hervi. Assez est il de age a garanter dowere.

Hengham. Sire il nous ont vouché com homme de plein age, la ou il poent avoir vouché de deinz age; e de la forme de lour voucher avom pris nostre excepcion, e a ceo tenom nous.

Hunt. Sire, ceo est terre socage e il mesmes v anz passé ad lessé de son heritage terres a terme des anz.

Hengham. Nous ne pledoms mie a la tenance, einz fesoms a la persone; e vous dioms q'il est uncore en la noriture sa mere.

Bereford. Vj anz passé il est hors de la noriture sa mere.

Hunt. Il tient en socage e est de plein age, e prest del averer.

Hengham. Il est veu en court, par quei de averer n'est pas mestier.

Bereford. S'il voet averer par pais, la court ne lui puet nent deveer.

Hengham. Nous le voloms averer par pais.

Bereford. Viegne bon pais, e gaitez voz jours a iij semeines de Pasche.¹

quo die *Bereford* dixit, *Hengham*, vous nous avez amené en ceo plee par vostre riote, savez autre chose dire a defere ceste garant?

Hengham. Sire, nous avom pledé a la forme del voucher, e de ceo sumes a issue de plee.

Ber. Vous ne volez autre chose dire, si agarde la court qe Cristiane rescovere sun dowere vers T. s'il eit de la terre etc. salve a lui sa accioun, e s'il n'eist q'ele rescovere vers N. e N. vers T. e T. en la merci etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 294d, Surrey.²

Christian the widow of John le Chaloner by her attorney demands against Geoffrey of the Conduit, vintner of London, whom Christian the widow of John le Baillif vouched to warranty and who warrants to her, the third part of one messuage in Suthwerke as her dower etc.

And Geoffrey comes by his attorney; and heretofore he vouched John the son of John le Chaloner to warranty thereof, who now comes by summons. And he asks that it be shown to him by what he ought to warrant to him etc.

And Geoffrey says that one John le Chaloner gave and with his charter confirmed the messuage to one John of Hatfeld, to hold to him and his heirs etc., and bound himself and his heirs to warrant the messuage to John of Hatfeld and his heirs and assigns by the charter of John le

¹ The record, however, shows that no *uenire facias* was awarded, but that a day was given to the parties for hearing their judgment. ² An earlier enrolment (r. 148d) is vacated 'quia error.' For the earlier process in this case see *De Banco Rolls*, No. 183, r. 148

STANTON, J. He is sufficiently of age to warrant the dower.

Hengham. Sir, they have vouched us as a man of full age, whereas they could have vouched us as within age. We have taken exception to the form of the voucher, and to that we hold.

Huntingdon. Sir, this is socage land, and he himself five years ago leased lands which were part of his inheritance for a term of years.

Hengham. We are not pleading about the tenancy, but about the person; and we say that he is still in his mother's maintenance.

BEREFORD, C.J. He has been out of his mother's maintenance six years.

Huntingdon. He holds in socage and is of full age. Ready are we to aver it.

Hengham. He has been seen in court, wherefore there is no need to aver it.

BEREFORD, C.J. If he wish to aver it by the country the court cannot refuse him.

Hengham. We will aver it by the country.

BEREFORD, C.J. Let a jury come; and do you wait until three weeks from Easter.

At that day BEREFORD said to *Hengham*: You have brought us into this plea by your rashness. Can you say anything else to defeat this warranty?

Hengham. Sir, we have pleaded to the form of the voucher, and about that we are at issue.

BEREFORD, C.J. You will not say anything else, so the court awards that Christian recover her dower against [John,] if he has of land etc., saving to him his action; and if he have not that she recover against [Geoffrey,] and [Geoffrey] against [John,] and that [John] be in mercy.¹

Note from the Record (*continued*).

Chaloner which he proffers, and which witnesses this etc. He says also that John of Hatfeld afterwards of his own seisin enfeofed Geoffrey of the messuage to hold to him and his heirs etc. by a certain other charter of John of Hatfeld which he proffers and which witnesses this etc. Whereupon he says that he is the assign of John of Hatfeld etc.; and for that reason John the son of John, as John le Chaloner's heir, is bound by his father's charter to warrant the messuage to Geoffrey as assign etc.

¹ The judgment is not correctly stated, owing to the fact that the reporter has supposed the action to have been brought against Geoffrey and not against the lady who vouched him.

Note from the Record (*continued*).

And John the son of John says that, whereas Geoffrey vouches him to warranty as of full age, he is within age etc. He says moreover that whereas Geoffrey strives to bind him to warranty as an assign etc. Geoffrey at the time when he vouched him to warranty made no mention of such an assign etc., he asks judgment of the voucher etc.

A day is given them for hearing their judgment here three weeks from Easter in the same state as now etc.

Afterwards at that day the parties came by their attorneys and likewise John the son of John, the warrant etc. And because Geoffrey proffered here in court the charters etc. which witness the feoffment and assignment and the warranty etc. in the form aforesaid; and in this plea of dower Christian the widow of John le Chaloner ought not to be prorogued by reason of the minority of the warrant from attaining (*consequenda*) her dower etc., it is awarded that John the son of John the warrant etc. by

15. CHAUMBERLEYN v. COMBES.¹

Ou dit fust qe l'enprisonement l'atturné savereit mie la tenance ou le seignur poeit estre resnablement garni.

Alice ke fu femme G. de C. porta sun bref de dowere vers W. Grelli de la terce partie del maner de C. W. après apparance fist defaute par quei le petit Cape returné W. fust demandé Johan Soke apparust par atturné.

Mugg. Nous demandoms jugement de la defaute W. leindemein Seint Martin e prioms seisine de terre.

Jon Soke. De cele defaute avantage ne poez prendre, qar com jeo vienche par la ville de Asscheton en le conté de Lancastre, jeo fu pris e enprisoné par les baillifs de la ville.

Ber. Queu jour ?

Johan Soke. Le Mekredy prochein devant la feste des apostles seint Simond e seint Jude, issi qe jeo ne poei estre icy lendemein de seint Martin. Et demandoms jugement, s'il le voet dedire, prest etc.

Mugg. Tut fuissez vous pris, com jeo ne grante nent, vostre seignur poet avoir venuz a sun jour e avoir esté resnablement garni e salvé sa tenance. Et demandoms jugement e prioms seisine etc.

Johan Soke. Il fut en Escoce e prest del averer etc.

Ad alium diem *Mugg.* Vous avez A. qe fu femme etc. qe prie seisine de terre par la defaute W. Grilli. Et si vous veez qe nous n'avom assez dit, nous vous dirroms assez.

¹ From Y (fo. 142 v°).

Note from the Record (*continued*).

reason of the deed of his father, whose heir he is, do warrant etc. saving to him an action, if any avail him in this behalf etc.; and therefore let Christian the widow of John le Chaloner recover her dower etc.; and if John the warrant etc. has anything of the free tenement which belonged to John le Chaloner, sometime the husband etc. then let Geoffrey the tenant etc. hold in peace etc. and let Christian the demandant etc. have of the land of John the son of John to the value etc., and if there shall be any deficiency etc. let her have it from the third part demanded etc.; and if John the warrant etc. has nothing of the free tenement etc. nor had on the day when he was vouched to warranty etc. then let Christian recover her dower against Christian the widow of John le Baillif, and let the same Christian have it from Geoffrey's land, and let Geoffrey have of the land of John the son of John to the value etc. when it shall fall to him etc.; and let John the son of John be in mercy etc., but he is pardoned because he is within age.

15. CHAUMBERLEYN *v.* COMBES.

A case in which it was said that the imprisonment of the attorney would not save the tenancy, and that his master could have been duly warned.

[Cecily] the widow of G. de C. brought her writ of dower against [Thomas de Grelle] of the third part of the manor of C. [Thomas] after appearance made default, whereupon the little Cape was returned. [Thomas] was called and John Soke appeared as his attorney.

Miggeley. We ask judgment of the default of [Thomas] on the morrow of St. Martin, and we pray seisin of the land.

John Soke. You cannot take advantage of this default, for as I came through the town of Ashton in the county of Lancaster I was taken and imprisoned by the bailiffs of the town.

BEREFORD, C.J. On what day?

John Soke. The Wednesday next before the feast of the Apostles Simon and Jude, so that I could not be here on the morrow of St. Martin. If he wishes to deny it, ready etc. And we ask judgment.

Miggeley. Even though you were taken, which I do not admit, your master could have come on his day, and have been duly warned, and so saved his tenancy. We demand judgment and pray seisin etc.

John Soke. He was in Scotland, and ready are we to aver it etc.

On another day *Miggeley* said: You have here [Cecily], the widow etc., who prays seisin of the land by the default of [Thomas de] Grelle. And if you think that we have not said enough, we will say enough.

Hervi. Dites ore.

Mugg. Sire, leindemeyn de seint Martin quant W. fist defaute, nous dioms qe Johan Soke sun attourné fust cienz devant vous en altre pleez *scil.* q'il se proffrit par attorné en un plee de dette pur Roger de Beauchaump executour du testament C. etc. Et de ceo voucheroms record icy q'il ne fu nent enprisoné etc.

Bereford fist regarder le roulle e trové fut qe Johan Soke se proffri a mesme le jour en cel play de dette.

Johan de Soke. Jeo voille averer qe jeo ne fu nent cy teu jour, mes en deceite de moy fust tel profre entré.

Ber. Vous ne poez nul averement avoir encontre record; qar si vous purriez avoir averement encontre record, issi serroient trestouz noz roulles fausez qe serroit encontre lei.

Johan. Sire coment serra jeo donqe aidé?

Bereford. Touz les gentz d'Engleterre ne poent saver ceste defaute.

Hervi. Pur ceo qe trové est par record qe vous attourné W. Grilli fust icy le jour qe la defaute fut agardé su vostre mestre. Et estre ceo W. Grilli qi attourné vous estes poet estre resnablement garni del jour qe vous fustes enprisoné e avoir venu cea a saver sa tenance, issi qe nule defaute ne eust esté agardé, si agard la court qe Alice rescovere sa seisine e W. Grilli en la merci.

Johan. Pur dieu qe jeo puisse avoir bref pur atteindre ceste fausine.

Hervi. Fetes vostre bille e vous averez ceo qe la court puet suffrir.

Le cas fut un, le demandant fist fausement entrer une essoigne sur le tenant e ajourna le sanz su del attourné.

II.¹

Bref fuist porté vers un T. qe avoit atourné qe fist defaute apres aparauce; et al jour etc. il alegga enprisonement; mes pur ceo qe soun mestre poeit renablement estre garni, et ceo jour l'atourné fust weu en court, seisine de terre fust agardé etc.

Un homme porta soun bref etc. vers Thomas Grilli qe fuist² par attourné, e l'attourné fist defaute apres apparauce. Le Petit Cape

¹ From *B* collated with *G*.

² fut, *G*.

STANTON, J. Say it now.

Miggeley. Sir, we say that the day after St. Martin, when [Thomas] made default, John Soke, his attorney, was here before you in another plea; to wit, he proffered himself as attorney in a plea of debt for Roger de Beauchamp, executor of the will of C. etc. And of this we vouch the record here, that he was not imprisoned.

BEREFORD, C.J., caused the roll to be inspected, and it was found that John Soke proffered himself on that day in a plea of debt.

John Soke. I wish to aver that I was not here on that day, but that the proffer was entered in deceit of me.

BEREFORD, C.J. You can have no averment against the record, for if you could have an averment to the contrary all our rolls would be falsified, and that would be against justice.

John Soke. Sir, how then can I have aid?

BEREFORD, C.J. All England cannot save this default.

STANTON, J. Inasmuch as it is found by record that you, the attorney of [Thomas de] Grelle, were here on the day when the default was awarded against your master, and further inasmuch as [Thomas de] Grelle, whose attorney you are, could have been duly warned on the day when you were imprisoned, and could have come here to save his tenancy, so that no default would have been awarded, the court therefore awards that [Cecily] recover her seisin and [Thomas de Grelle] be in mercy.

John Soke. For God's sake can I have a writ to attaint this fraud?

STANTON, J. Make your bill and you shall have what the court can allow.

The case was one where the demandant fraudulently caused an essoign to be entered on behalf of the tenant, and the latter to be adjourned without the knowledge of his attorney.

II.¹

A writ was brought against one T. who had an attorney. The latter made default after appearance; and on the day given alleged imprisonment. But because his master could have been duly warned and because on the day of the default he was seen in court, seisin of the land was awarded to the demandants.

A man [and his wife] brought his writ etc. against Thomas de Grelle, who appeared by attorney. The attorney made default after

¹ This appears in the Old Edition at p. 94.

issit et retourné as utaves de seint Hill', au quel jour le demandaunt pria seisine de terre par la defaute Thomas Grilly. L'attourné T. de G. respoundy et dit q'il fuist arestu el countee de Launcestre en la ville de W. sicome il fuist en venant vers la court, pur ceo q'il y avoit un homme naufré en la ville et hu et crye se leva, et pur suspeccioun sy fuy jeo pris en chymynant et emprisoné tauntqe le Lundy après la Seint Martyn, a quel jour vous sourmoistes cele defaute et s'yl le veot dedire nous l'averoms. Jugement si par cele defaute avauntage purrietz ¹ prendre etc.

Ber. Quey avoit il a noun qe fuist naufré ?

L'attourné. Jon Mille.

Ber. Quel jour fuist ceo qe vous estoietz pris ?

L'attourné. Le Mesgredy proscheyn avant etc. issint qe jeo ne purrai estre au jour etc. *scilicet* lemdemeyn de seint Martyn.

Migg. Tout eussetz vous esté pris, qe jeo ne graunte mye, vostre seigneur qi attourné vous estes pout avoir venu et renablement avoir esté garny et avoir savé soun attourné, mes ² yl ne fist nyent, par quei demaundoms jugement et prioms seisine etc.

L'attourné. Nous voloms averrer *ut supra*.

Ber. Il chalenge la defaute T. de G. vostre mestre etc.

Caunt. Si T. de G. eust esté resceu et fuist ore ceinz et vous preissetz a la defaute T. de G., et nous deissoms q'il fust arestu etc. qe par tant ne puist la defaute estre savé vous dirretz q'il avoit attourné en mesme le plee et mesme le jour de cele defaute et issint ne prendra nul avauntage de ceo, q'il fuist attourné.

Denum. Nous sumes attourné nostre seigneur, et dil heure qe nous nous voloms averrer *ut supra*, jugement.

A lemdemeyn *Migg.* Sire vous avietz A. etc. et prie seisine de terre par la defaute T. de G.

L'attourné. Nous voloms averrer *ut supra*, par quei assetz avoms respoundu a cele defaute, pur sauver la tenaunce.

Migg. Lemdemeyn de seynt Martyn qaunt T. fist defaute soun attourné fuist ceinz devaunt vous et se profri en autre plee, *scilicet* de dette etc. encountre l'attourné R. de G. executour C. et de ceo vouchoms recorde etc.

Berr. Rewarderon ³ les roulles. Et trova qe l'attourné se profrit a mesme le jour *ut supra*.

¹ pusset, G.

² *Subs.* par quei, G.

³ rewarda, G.

appearance. The little Cape issued and was returned on the octave of St. Hilary. At that day the demandants prayed seisin of the land for the default of Thomas de Grelle. The attorney of Thomas answered and said that he was arrested in the county of Lancaster in the vill of [Ashton] as he was on his way to the court, because a man was wounded there, and the hue and cry was raised, and he was taken on suspicion while on the road, and imprisoned till the Monday after St. Martin's Day, on which they alleged the default, and that if the demandants wished to deny this he would aver it. He asked judgment if by that default they could take advantage.

BEREFORD, C.J. What was the man called who was wounded?

The Attorney. John Mile.

BEREFORD, C.J. On what day were you taken?

The Attorney. The Wednesday next before etc., so that I could not be here at the day of the default—to wit, the morrow of St. Martin.

Miggeley. Even though you were taken, which I do not admit, your master, whose attorney you are, could have come, and have been duly warned and saved his attorney, but he did not. Wherefore we ask judgment and pray seisin etc.

The Attorney. We will aver as above.

BEREFORD, C.J. He challenges the default of Thomas de Grelle, your master etc.

Cambridge. If Thomas de Grelle had been received and were now here, and you betook yourselves to the default of Thomas de Grelle, and we said that he was arrested etc., nevertheless the default could not be saved, for you would say that he had an attorney in the same plea and on the very day of the default, and therefore the demandants should take no advantage from the fact that he had an attorney.

Denham. We are the attorney of our master, and since we wish to aver *as above* we ask judgment.

The next day *Miggeley.* Sir, you have here the demandants etc. and they pray seisin of the land for the default of Thomas de Grelle.

The Attorney. We wish to aver *as above stated*, whereby we have sufficiently answered their default to save the tenancy.

Miggeley. The morrow of St. Martin, when Thomas made default, his attorney was here before you and proffered himself in another plea—to wit, of debt against the attorney of [R. de B.,] the executor of [A. of W.,] and of that we vouch the record.

BEREFORD, C.J. Let us see the rolls. (And he found that he proffered himself on the same day *as above stated*.)

L'attourné. Jeo voil averrer qe jeo ne fui pas a cel jour ici, mès en desceite de moi fuist cele profrer entré.

Ber. Vous ne poietz encountre record a nul averement avenir, quar *si sic*, ceo serroit a fauser touz nos roulles qe serroit encountre lei.

L'attourné. Coment dounqe serra jeo eidé ?

Ber. Touz les gentz d'Engleterre ne pount sauver cele defaute. Et pur ceo qe trové est par record qe vous q'estes attourné T. de G. faist ici jour de la defaute agardé sour vostre mestre. Estre ceo T. de G. q'attourné etc. poeit avoir esté renablement garni del houre ¹ qe vous estoietz emprisoné tantqe al jour de la defaute agardé et avoir venu et sauvé la tenaunce issint qe nule defaute eust esté agardé, si agarde etc. qe A. recovere.

L'attourné pria bref d'atteindre cele fausine.

Hervi. Fetes bille et vous averetz ceo qe la court puet etc.

III.²

Un homme porta son bref vers un tenant qe voucha a garant Thomas de Greille q'vient en court e garranta e pleda al demande e jointe une enqueste e avoint jour. Au queu jour T. fit defaute par quei le Petit Cape issit, retourné etc. A quel jour *Migg.* pur le demandant demanda jugement, si ³ sur la defaute etc.

Denum. Par cele defaute ne devet avantage aver, qe veez ci l'attourné Thomas; e vous dît q'il fut attourné jour de la defaute etc. mes auxicom il fut enchyminant vers ceste court il fut pris e enprisoné en tele ville, e illoques detenu etc. Prest etc., si vous le voillez dedire. Jugement si a cele default puissez prendre etc.

Migg. Nous pernom a la defaute T. de G.⁴ nent a la defaute l'attourné.

Caunt. Et si T. de G. fut en court e vousist cele defaute saver ⁵ com par reson d'emprisonement fait a lui mesme il ne serra pas a ceo resceu, pur ce q'il avoit attourné mesme le jour nent remué en mesme le plee; e del hure qe lei voet qe l'absence T. soit par tele disturbance escusé,⁶ e ceo ne put estre par T. etc., dont piert il qe par l'attourné.

Migg. Par tele disturbance ne poet l'attourné absence de son

¹ jor, G.

² From D collated with T.

³ Om. si, T.

⁴ Ins. e, T.

⁵ sauver, T.

⁶ Sic, T; escuser, D.

The Attorney. I will aver that I was not here on that day, and that this proffer was entered in deceit of me.

BEREFORD, C.J. You cannot get to any averment against a record, for if so that would be falsifying all our rolls, which would be against justice.

The Attorney. How then shall I be aided?

BEREFORD, C.J. All England cannot save that default. And because it is found by record that you, who are the attorney of Thomas de Grelle, were here on the day when the default was awarded against your master; and because, besides this, Thomas de Grelle, whose attorney you are, could have been duly warned from the time when you were imprisoned until the day when the default was awarded, and could have come and saved the tenancy, so that no default would have been awarded, so awards the court now that [Hamond and Cecily] recover.

The Attorney prayed a writ to attaint that forgery.

STANTON, J. Make a bill, and you will have what the court can award you.

III.

A man brought his writ against a tenant, who vouched to warranty Thomas de Grelle, who came into court and warranted. He pleaded to the demand, and an inquest was joined, and they had a day. At that day Thomas made default, whereupon the Little Cape issued and was returned etc. At that day *Miggeley* for the demandant asked judgment, if upon the default etc.

Denham. You ought not to have advantage by that default, for see here the attorney of Thomas. He tells you that he was the attorney on the day of the default etc., but as he was on his road to this court he was taken and imprisoned in such a vill, and there detained etc. Ready etc. if you wish to deny it. Judgment if you can betake yourselves to that default.

Miggeley. We betake ourselves to the default of T. de G. and not to that of the attorney.

Cambridge. And if T. de G. were [now] in court and wished to save that default, as, for example, on account of his own imprisonment, he would not be admitted to do so, because he had an attorney in the same plea on the very day of the default who was not removed; and whereas justice demands that the absence of Thomas should be excused on account of the disturbance, and it cannot be excused by Thomas, it appears that it should be by his attorney.

Miggeley. The attorney cannot save his client's absence by the

client saluer.¹ Et vous dioms qe mesme cesti atturné a mesme le jour qe T. fit defaute respondi par atturné pur Piers de Schiton² en le plee q'il avoit entre mesme cele P. e R. de Effreton e ceo vouche recorde etc. Jugement s'il puisse dire q'il fut emprisoné mesme le jour.

Hervi. Pur ceo qe nous trovoms par recorde de voz responses³ a mesme le jour par atturné pur⁴ voz autres clientz e vous ne savez⁵ la defaute vostre client autrement saver,⁶ si agarde la court qe le demandant recovre vers le tenant e le tenant a la value vers vostre client etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 124d, Norfolk.

Hamond le Chaumberleyn and Cecily his wife heretofore demanded in court here against Thomas de Grelle whom Edmond of Combes vouched to warranty and who warranted to him a moiety of the manor of Neuton⁷ as the dower of Cecily by the endowment of Michael of Caukwell her first husband etc. so that Thomas heretofore in court here to wit on the morrow of St. John the Baptist last past [came] and pleaded with Hamond and Cecily and put himself thereof on a jury of the country etc. and they had a day thereof, the quindene of St. Michael next following.⁸ At which day Thomas caused himself to be essoigned against Hamond and Cecily of the plea. And they had a day by the essoigner of Thomas here on the morrow of St. Martin next following; at which day Thomas made default so that the sheriff was then ordered to take the moiety into the king's hand and to summon him to be here at this day to hear his judgment thereof etc. And the sheriff now witnesses that the moiety was taken etc. and that he summoned him. And upon this come as well Hamond as Cecily by William Tebaud the attorney of Cecily, and likewise Thomas by Thomas of Soke his attorney; and Hamond and Cecily betake themselves straitly to the default which Thomas de Grelle made here on the morrow of St. Martin after he had appeared here in court etc. And Thomas Soke says that the default ought not to hurt Thomas de Grelle his master in this behalf, because he says that he Thomas of Soke, who was the attorney of Thomas de Grelle in this cause, before the default was made and at the time of the default etc. was at Malncestre in the county of Lancaster before the morrow of St. Martin, to wit on the Wednesday next before the feast of the Apostles Simon and Jude next before the morrow of St. Martin; and Thomas Soke as he was journeying towards the court here on that Wednesday wished to pass through the town of Asshton⁹ in the county of Lancaster, and he says that one John Miles was then and there wounded by unknown men, so that at the com-

¹ sauver, *T.* ² As to this see the note from the record. ³ *For de voz responses, subs. qe vous respondites, T.* ⁴ *sic, T; par D.* ⁵ *saviez, T.*
⁶ *Om. saner, T.* ⁷ This is Newton near Swaffham. ⁸ The word 'cras' is here written in the margin of the roll. ⁹ This is Ashton-under-Lyne.

disturbance. We tell you that this same attorney on the same day when T. made default answered as attorney for Peter of Schiton in the plea which was between this same Peter and R. of Effreton, and of this we vouch the record. Judgment if he can say that he was in prison on that same day.

STANTON, J. Because we find by record that you answered on the day of the default as attorney for your other clients, and you cannot save the default of your client otherwise [than as you have attempted], the court awards that the demandant recover against the tenant and the tenant to the value etc. against your client etc.

Note from the Record (*continued*).

plaint and cry of this John the constables of the peace of the town of Asshton, John Hackepenne and John Blot, because it was despaired of the life of John Mile imputed to Thomas Sok that he had wounded him, and forthwith arrested Thomas and detained him in prison there until the Wednesday next after the morrow of St. Martin, and thereby he could not be present on the morrow aforesaid etc. in court here to defend the plea of Thomas de Grelle his master etc.; and this he is ready to aver as the court shall award. Whereupon he asks judgment etc.

And Hamond and Cecily say that Thomas ought not to delay their seisin in this behalf for the reason aforesaid because they say that the Wednesday before the feast of the Apostles Simon and Jude is so far distant from the morrow of St. Martin etc. and within this term Thomas de Grelle could have been and ought to have been sufficiently warned [*premuniri*] of the impediment of their attorney, if any befell him etc. wherefore Thomas de Grelle at that day by himself or another could have been present in court here to defend his plea if he had wished etc.¹ They say further that Thomas of Soke on the morrow of St. Martin was not detained in prison at Asshton etc. but they say that at that day he was in court here, and he himself as the attorney of Roger de Beauchamp executor of the will of one Agnes of Wodhull prosecuted on that same morrow a default against one Roger of Wylye on a plea of debt, which default of Roger of Wylye is entered here in the term of St. Michael last on roll cccxvj.; and the default which Thomas de Grelle made against Hamond and Cecily in the plea aforesaid etc. was afterwards entered here in the same term of St. Michael on roll cccxxxiij. and this they are ready to aver by the record of the rolls of the same term of St. Michael etc. Whereupon they ask judgment etc.

And Thomas de Grelle cannot deny this etc. Therefore it is awarded that Hamond and Cecily recover their seisin thereof against Edmond, and that Edmond have of the land of Thomas de Grelle to the value etc., and that Thomas be in mercy.

And upon this Hamond and Cecily say that Michael her first husband

¹ The word 'cras' is here written in the margin of the roll.

Note from the Record (*continued*).

etc. died seised of the tenements whereof etc. and they ask for their damages etc. Therefore the sheriff is ordered that he enquire diligently by the oath of good and lawful men etc. if Michael died seised of the tenements in his demesne as of fee etc. and if etc. that he then enquire of the damages etc., and that he make the inquisition etc. known here on the quindene of Easter etc. distinctly and openly under the seal etc.

Afterwards, process thereof being continued upon the inquisition concerning the damages until the morrow of the Purification 8 Ed. II.,

16. ST. AMAND *v.* ST. AMAND.¹

Ou un *unde nichil habet* fust sustenu nent resteant qe ele fut dowé en mesme la ville par l'assignement le tenant pur ceo qe le tenant fut heir de partie des tenemenz e purchasour de partie etc.

Alice ke fu femme B. de C. porta son bref de dowere vers P.

Pass. La ou Alice porte cestui bref de dowere *unde nichil habet*, e suppose par son bref qe ele rien n'ad, nous dioms qe ele est dowé de xvj acres de terre en mesme la ville.

Hertep. De qui assignement?

Hervi a *Pass.* Ele puet estre bien dowé e nent de vostre assignement.

Hertep. B. nostre baron enfeffa P. sun frere des certainz tenemenz des queux nous demandoms ore dowere, e pus apres le deces B. le rey seisi les tenemenz. P. com frere e heir purchaca hors de la main le rey par proces de la chancerie. Et pus le chanceler comanda a cestui P. q'il dowast A. Par comandement le chaunceler lui assigna les xvj acres en noun de dowere del heritage qe lui fut descendu par son frere nostre baroun. Et demandoms jugement si des tenemenz q'il purchaca de nostre baroun en sa vie dowere ne devoms avoir.

Pass. Seisi de dowere par nostre assignement dount statut nous aide.

Hervi. Il vous dient qe vous avez tenemenz en la ville de vostre purchaz e de vostre heritage; e issi tenante de diverse natures. Pur quei n'avereit ele son dowere de vostre purchaz, nent resteant qe ele est dowé de vostre heritage e de vostre assignement; issi qe statut

¹ From Y (fo. 142 v°).

Note from the Record (*continued*).

Hamond and Cecily came by William Tebaud their attorney. And the sheriff of Norfolk now sent the inquisition which says that Michael the first husband etc. died seised of the moiety whereof etc. in his demesne as of fee and that Hamond and Cecily had damages by reason of the detention of the dower to the value of thirty-two pounds etc.

Therefore it is awarded that Hamond and Cecily recover their damages aforesaid etc.

Damages xxxii pounds whereof xl shillings to the clerks.

16. ST. AMAND *v.* ST. AMAND.¹

To a writ of dower *unde nichil habet* the heir answered that the widow was already endowed by his assignment. The widow replied that she was only endowed of the land which had descended to the heir and not of the land of which her late husband had enfeoffed the heir.

[Mary] the widow of [Almary de St. Amand] brought her writ of dower against [John de St. Amand].

Passeley. Whereas [Mary] brings this writ of dower *unde nichil habet* and supposes by her writ that she has no dower, we say that she is endowed of sixteen acres of land in the same vill.

Hartlepool. By whose assignment?

STANTON, J., to *Passeley*. She can be endowed, and yet not by your assignment.

Hartlepool. [Almary] our husband enfeoffed [John] his brother of certain tenements, of which we now demand dower, and then after the decease of [Almary] the king seised the tenements [of which Almary died seised]. [John] as brother and heir purchased them from the king's hand by process in the chancery. Then the chancellor commanded this [John] to endow [Mary]. By the chancellor's command he assigned her the sixteen acres of land in name of dower out of the inheritance which had descended to him from his brother, our husband. And we ask judgment if we ought not to have dower of tenements which he purchased from our husband in his lifetime.

Passeley. She is seised of dower by our assignment, wherefore the statute² aids us.

STANTON, J. They tell you that you have tenements in the vill both by your purchase and your inheritance; and so your tenancy is of different natures. Why should she not have her dower of your purchase, even though she be endowed of your inheritance and

¹ The proper names are corrected from the record. ² Stat. West. I. c. 49.

n'est nent contrariant a cestui bref *unde nichil habet*, pur quei dites autre chose.

Et postea ego quesui a *Pass.* causam dicti *Hervi*, et ipse dixit quod habuit racionem pro se.

Et pus furent au pais su l'assignement etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 189, Bucks.

Mary the widow of Almary de St. Amand by Richard of Snyterle her attorney demands against John de St. Amand the third part of one messuage one carucate of land and four acres of meadow in Grendon¹ as her dower etc.

And John by Roger Warde his attorney comes and says that he ought not to answer her thereof on this writ of *unde nichil habet* etc. for he says that Mary is seised of sixteen acres of land in the vill aforesaid of the free tenement which belonged to Almary sometime her husband etc. in the name of dower; by the assignment of John etc.

And Mary says that John ought not to quash her writ in this behalf, for she says that Almary sometime her husband etc. died seised in his demesne as of fee of certain tenements in the vill of Grendon, which were seised after the death of Almary into the king's hand, so that since then (*postea*) she

17. HILL v. GRAUE.²

Ou quantité des tenemenz ne changa mie le doun qe passa par la chartre etc.

Une Alice ke fu femme D. porta sun bref de dowere vers A. e demanda la terce partie de vj acres de terre ove les appurtenances etc. A. voucha a garant B., qe vient en court e demanda par quei me vouchez vous.

Hedon. Veez icy la chartre vostre auncestre. E la chartre fu lue, qe dit qe son auncestre lui avoit doné iij perchez de terre.

Willuby. E nous jugement desicom vostre chartre ne voet qe iij perches de terre, e la demande de quei vous nous etc. si est la 3^e partie de vj acres de terre. Et quant a iij perchez nous garanteroms e froms a la value quant nous soit descendu etc. E jugement si du remenant garanter devoms.

Hedon. Qe les vj acres passent par mie la chartre, prest etc. qar c'est un sillion qe contint en sei vj acres solom les usages du pais.

¹ Grendon Underwood near Ludgershall.

² From Y (fo. 142 r^o).

by your assignment? The statute is not contrary to this writ of *unde nihil habet*. Therefore say something else.

And afterwards I asked *Passeley* for the reason for STANTON's statement, and he said that the judge had some reason of his own.

The parties afterwards put themselves on the country about the assignment.

Note from the Record (*continued*).

holds the tenements which she now holds in dower, by the assignment made to her by the lord king in chancery etc. And she says that John purchased the tenements whereof she now demands dower etc. from Almary formerly her husband etc., and of these tenements she has nothing in the name of dower etc. Whereupon she says that she has the tenements which she holds in dower in the vill aforesaid, by the king's assignment of the free tenement, whereof Almary died seised as aforesaid etc., and not of the tenements which John purchased etc. by the assignment of John etc. And she asks that this may be enquired by the country.

Issue is joined and a *uenire facias* awarded here for five weeks from Easter.

17. HILL v. GRAVE.

A vouchee alleged that part only of the lands in demand were comprised in the charter by which he was vouched. He was driven to warrant the whole, as the tenant was ready to aver that they passed entirely.

One [Maud] the widow of [Richard] brought her writ of dower against [William] and demanded the third part of six acres of land with the appurtenances etc. [William] vouched [Thomas] to warranty, who came into court and asked by what he vouched him.

Hedon. See here the charter of your ancestor. And the charter was read, which said that his ancestor had given him three perches of land.

Willoughby. We ask judgment, seeing that your charter speaks of three perches of land only, and the demand, of which you vouch us, is the third part of six acres of land. And as to three perches we will warrant, and cause you to have as much to the value thereof as has descended to us. Judgment if we ought to warrant the remainder of the demand.

Hedon. The six acres pass by the charter, ready etc., for this is a selion which contains six acres according to the usage of the country.

Herci. Il vous dient qe la demande passa e enterement par mi la chartre, volez cest averement?

Willuby. Sire A. garantera e fra a la value quant tenemenz lui soient descenduz par son auncestre etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 30, Lincolnshire.

Maud the widow of Richard of the Hill' of Scofthorn by Netelham, by Nicholas of Welton her attorney demands against William the son of William of Graue the third part of six acres and a half of land in Dunham as her dower etc.

And William by William of Askham his guardian comes and he heretofore vouched thereof to warranty Thomas the son of Richard of the Hill' of Dunham, who now comes by summons by Nicholas Orger his attorney, and asks that it may be shewn him by what he ought to warrant the third part to her etc.

And William says that Richard del Hill' the father of Thomas whose heir he is gave granted and with his charter confirmed to William his heirs and

18. DUNHALL v. BERNEWELL.¹

(1) De dote ou le vouché par le fait son pere dit qe son pere morust seisi.

(2) De dote ou le tenant voucha a garant, qe vynt etc. e contreplesa etc. pur ceo q'il avoit accion a demander etc., e dit coment. Sur ceo furent a issue.

Une femme porta son bref de dower.² Le tenaunt voucha a garraunt etc.³ qe vient en court et demanda par quey il lui voleit⁴ a la garrauntie lier.⁵ Le tenaunt mist avaunt chartre⁶ qe voleit qe le pere le vouché⁷ lui dona ceux⁸ tenemenz et obliga lui et ses heirs etc. et il est heir. Jugement⁹ etc.

*Lovedei.*¹⁰ Garaunter ne¹¹ nous¹² devons par ceo fait, car nous dioms qe nostre piere qi fait etc. morust seisi en son demene com de fee de mesme ceux tenemenz, parunt nous avoms accioun a demander etc. Jugement etc.

¹ Text from *T* compared with *A, C, D, P, Q, R*. First head-note is from *T*, and the second from *D*. ² entré *P*. *Ins.* vers un tenant qi, *C, P, Q*. ³ *Om.* etc., *C, D, P, Q, R*. ⁴ voucha, *C, P, Q, R*. ⁵ *Om.* a la garauntie lier, *C, P, Q, R*. ⁶ fet, *C, P, Q*. ⁷ garaunt, *C, P, Q, R*. ⁸ lez, *C, P, Q, R*. ⁹ *Om.* lui . . . Jugement, *C*. *Om.* et obliga . . . Jugement, *P, Q*. ¹⁰ In place of this and the following speech *C* has: 'Quele chartre qe vous mettez avant, nostre pere morut seisi en son demene com de fee, issi qe nous avoms accioun a demaunder mesme lez tenemenz. *Kyng.* Est ceo le fet vostre auncestre ou noun? *Loveday.* Nous ne poms dedire, mes nous vous dioms *ut supra.*' Similarly in *P, Q*. *Loveday's* first speech is worded differently but is to same effect in *R* as in *C*. ¹¹ *Om.* ne, *T*. ¹² *Om.* nous, *A, D, R*.

STANTON, J. They tell you that the demand passed entirely by the charter. Will you accept this averment?

Willoughby. Sir, [Thomas] will warrant, and will give her tenements to the value of all those which have descended to him from his ancestor.

Note from the Record (*continued*).

assigns the tenements etc. whereof etc., and bound himself and his heirs to warranty etc. And he proffers a charter under the name of Richard which witnesses this etc.

And Thomas well acknowledges the charter to be the deed of Richard the father etc. and as his heir of the blood having nothing by descent warrants to her and renders to Maud her dower etc. Therefore let her have seisin thereof. And it is awarded that if Thomas have lands and tenements by descent as heir of Richard his father etc. then let William hold in peace and let Maud have of the land of Thomas to the value of the third part; and if any thereof shall be wanting to her, let her have it of the third part demanded. And let Thomas be in mercy.

18. DUNHALL *v.* BERNEWELL.

On a writ of dower a man vouched by his father's deed was allowed to object that the latter died seised.

A woman brought her writ of dower. The tenant vouched to warranty etc. The vouchee came into court and asked by what the tenant wished to bind him to the warranty. The tenant put forward a charter which said that the father of the vouchee gave these tenements to him and bound himself and his heirs etc., and the vouchee is his father's heir. Judgment, etc.

Loveday. We are not bound to warrant under this deed, for we say that our father, whose deed it is, died seised in his demesne as of fee of these very tenements, wherefore we have an action to demand them. Judgment etc.

King. Donques grauntez¹ bien le fait ?

Ber. Cest voirs,² mes il vous dit et tende³ d'averer⁴ qe soun auncestre morust seisi etc. apres qi mort vous⁵ abatistes en mesme ceux tenemenz issi qe vous n'aviez unques rien par my la chartre.

King. qe son piere nous dona etc. e obliga etc.

Lovedei. qe nostre piere morust seisi issi qe vous n'avez rien par my la chartre⁶ prest etc.⁷

Et alii econtra.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 61d, Oxford.

Alice the widow of Adam of Dunhall by her attorney demands against John of Bernewell and Ellen his wife the third part of one messuage six acres of land and the moiety of one acre of land three acres of meadow and three acres of wood in Hanebergh⁸ ; and against Emma the daughter of Adam of Dunhall the third part of one messuage five acres and the moiety of one virgate and an acre of land three acres of meadow and three acres of wood in the same vill as her dower etc.

And John and Ellen and Emma by their attorney come, and heretofore they vouched singly to warranty thereof Robert the son of Adam de la Dunhall etc. who now comes by summons etc. and asks that it be shewn him by what etc.

And John and Ellen proffer a charter under the name of Adam of Dunhall the father of Robert whose heir he is, which witnesses that Adam the father etc. gave granted and with his charter confirmed to John and Ellen the aforesaid tenements whereof Alice demands dower against them to hold to them and their heirs for ever ; and he bound himself and his heirs

19. ANON.⁹

dowere.

Une femme porta son bref de dowere vers un homme qe fit defaute par qey¹⁰ le graunt Cape issit,¹¹ retorné. Le tenaunt vynt en cour e dit q'il n'avoit rien en les tenemenz¹² si noun joynt ove C. sa femme nent nomé en le bref.¹³ Jugement du bref. Et mist avaunt chartre de joynt feffement. Le demaundaunt¹⁴ se prist¹⁵ a la defaute.

¹ A here ends abruptly. ² Om. cest voirs, D. ³ tendoms, T. Om. Cest . . . tende. C, P, R. ⁴ Il veot averer, C, P, R. ⁵ Ins. vous, D. ⁶ Om. King . . . chartre, D. ⁷ T and D end here. Concluding words from C, P, R. ⁸ Handborough is three miles S.W. of Woodstock. ⁹ Text from R collated with C, P, and Q. ¹⁰ Om. par qey, C, P, Q. ¹¹ Om. issit, C, P, Q. ¹² Om. en lez tenemenz, C, P, Q. ¹³ Om. en le bref, C, P, Q. ¹⁴ tenant, C, P, Q. ¹⁵ Ins. tut, C P.

Kingeshemed. Then you grant the deed ?

BEREFORD, C.J. That is true ; but he tells you and offers to aver that his ancestor died seised etc. and after his death you abated into these same tenements, so that you never had anything by the charter.

Kingeshemed. We say that his father gave us the tenements, and bound himself and his heirs to warranty.

Loveday. Our father died seised, so that you have nothing by the charter ; ready etc.

And the others to the contrary.

Note from the Record (*continued*).

to warranty etc. And Emma likewise proffers another charter under the name of Adam the father etc. which witnesses that Adam gave to her the tenements whereof Alice demands dower against her to hold to Emma and her heirs for ever etc. And he bound himself and his heirs to warranty etc. and for that reason he is bound to warrant the tenements to them etc.

And Robert says that whatever charters John and Ellen and Emma may proffer in this behalf under the name of Adam his father etc. the same Adam died seised of the tenements in his demesne as of fee etc. whereby an action avails him to demand the tenements against them on the seisin of Adam his father etc. whereupon he asks judgment etc.

And John and Ellen and Emma say that Adam the father etc. long before his death enfeoffed them of the tenements by the charters aforesaid and put them in seisin thereof etc. And of this they put themselves upon the country. Issue is joined and a *venire facias* awarded here for three weeks from Easter.

19. ANON.

To a plea of joint tenancy with a wife not named in the writ the demandant objected that his default had not been purged. Thereupon the tenant denied the summons by his law.

A woman brought her writ of dower against a man who made default, whereupon the Grand Cape issued and was returned. The tenant came into court, and said that he had nothing in the tenements except jointly with his wife, who was not named in the writ. [He asked] judgment of the writ, and put forward a charter of joint feoffment. The demandant betook herself to the default.

Scrop. Depus qe nous mettoms avaunt chartre de joynt feffement¹ qe² testmoine la jointenaunce,³ demaundoms jugement.

Denum. Et nous jugement si a nul response devez estre receu, si la qe vous eiez sauvé la defaute.

Scrop defendi la somons par sa ley.⁴

20. BERE v. ABYNDON.

I.⁵

Ael. Prier estre resceu. Et non fuit quia nichil habuit ad testificandam reversionem sibi.

Jon le fitz Jon de Bere⁶ porta son bref de ael vers un G.⁷ qe fist defaute apres defaute. Survint Thomas le fitz Thomas⁸ et dit qe Jon de Bere⁶ dona ceux tenemenz a T. et a G. sa femme et a les heirs Thomas, issi qe G. q'ore fet defaute⁹ n'ad qe franc tenement et la revercioun est a nous; et prioms estre resceu etc.¹⁰

Hedon. Avez rien de ceo?

Migg. Nous le¹¹ voloms averer.

Hedon. Depus q'il ne¹² ount rien qe testimoigne lour dit¹³ si noun vent, et ceo chet en especiauté,¹⁴ jugement.

Berr. Avet¹⁵ rien qe testimoine le purchas¹⁶? Si vous eiet, si¹⁷ le mettet avant.

Migg. mist avant une quiteclaim fet a Thomas et as ces heirs.

Hedon. Ceste quitecleim n'est mye¹⁸ en affermaunt vostre dit, qar¹⁹ put estre qe G. avoit fee et²⁰ la quiteclaim fut tiele,²¹ par quey nous demaundoms jugement et prioms seisine de terre.²²

*Migg.*²³ Depus qe nous mettoms avaunt²⁴ la quiteclaim qe veut qe nous avoms fee, et²⁵ ouvesqe cel nous²⁶ voloms averer le purchas, jugement si nous ne devons estre receu.

Bere. Vous n'avet rien si noun par purchas a vostre pere et a la²⁷

¹ *Om.* de joint feffement, *C, P, Q.* ² *For* qe *subs.* de, *C, Q.* ³ feffement, *C, P, Q.* ⁴ *Om.* par sa ley, *C, P, Q.* ⁵ From *R* collated with *C, P, Q.* The headnote is from *C.* The headnote in *R* is as follows:— 'Prier estre receu etc. et ne put pas, cuius contrarium termino Michaelis anno sexto.' ⁶ Berford, *C*; Bereford, *P, Q.* ⁷ *S., C, P, Q.* ⁸ un *J., C*; un *R., P*; un *N., Q.* ⁹ *Ins.* apres defaute, *C, P, Q.* ¹⁰ a ly et pria estre resceu, *C, P, Q.* ¹¹ *Om.* le, *C, P, Q.* ¹² *Om.* ne, *Q.* ¹³ *Om.* lour dit, *C, P, Q.* ¹⁴ *Ins.* etc. *C.* ¹⁵ *Ins.* demaundoms, *C, P, Q.* ¹⁶ Si vous eiez, *C, P, Q.* ¹⁷ *For* n'est mye *subs.* ¹⁸ grant, *C, P, Q.* ¹⁹ *Om.* si vous eiet si, *C, P, Q.* ²⁰ *For* n'est mye *subs.* est mys avaunt, *P*; nest pas mys, *Q.* ²¹ *For* qe *subs.* pur quei etc., *Q.* ²² *Om.* G. avoit fee et, *C.* ²³ *Ins.* qe *S.* avoit fee, *C.* ²⁴ *Om.* par quey. . . terre, *C.* ²⁵ Mutford, *R.* ²⁶ *Om.* put estre . . . avaunt, *Q*; *Om.* G. avoit fee . . . mettoms avaunt, *P.* ²⁷ *Om.* et, *R.* ²⁸ *Ins.* le, *P, Q.* ²⁹ sa, *C, P, Q.*

Scrope. Since we put forward a charter of joint feoffment, which witnesses the joint tenancy, we ask judgment.

Denham. And we ask judgment if you ought to be received to any answer until you have saved your default.

Scrope denied the summons by his law.

20. BERE *v.* ABYNDON.¹

I.

Ael. Prayer to be received, and the intervener was not received, because he had nothing which showed that the reversion was limited to him.

John the son of John [le Bere] brought his writ of ael² against one [Christine] who made default after default. Thomas the son of Thomas intervened and said that John [le Bere] gave these tenements to Thomas and [Christine] and the heirs of Thomas, so that [Christine] who now makes default had only frank tenement, and that the reversion belonged to [him]; and [he prayed] to be received.

Hedon. Have you anything of this?

Miggeley. We will aver it.

Hedon. Since they have nothing which witnesses what they say except mere words, and [reversion] is a matter of specialty, [we ask] judgment.

BEREFORD, C.J. Have you anything which witnesses the purchase? If you have, put it forward.

Miggeley put forward a quitclaim made to Thomas and his heirs.

Hedon. This quitclaim is not affirmation of what you say; for it might be that [Christine] had the fee, and [yet] the quitclaim be such as this. Wherefore we ask judgment and pray seisin of the land.

Miggeley. Since we put forward the quitclaim which states that we have fee, and with that we wish to aver the purchase, [we ask] judgment if we ought not to be received.

BEREFORD, C.J. You have nothing except by purchase to your

¹ The proper names are taken from the record. This case is *Fitz. Monstrauns*, fo. 112 v^o, case 40.

² According to the other reports the proceedings were begun by a writ of entry. The record gives us no assistance on this point.

femme, q'ad fet defaute apres defaute ¹ et a les heirs vostre pere auxi comme vous avez dit, et de ceo rien ne mostrez qe chet naturellement etc. si noun ² vent, par quei etc.³

Migg. L'enfant qe prié estre receu est dens age et la femme qe fet defaute par collusioun ad la chartre devers ⁴ ly et la quitecleim testimoigne ⁵ qe nostre pere avet fee et fut enherité, et ⁶ ovesqe cel ⁷ nous voloms averer le purchas estre tiel comme nous avoms dit et en la manere purchacé.⁸ Jugement.⁹

Berr. Depus qe vous n'avet rien qe testimoigne vostre dit si noun vent, ¹⁰ si agarde ceste court qe Jon recovere sa seisine ¹¹ etc.

II.¹²

Entré ou homme pria de estre resceu etc. Et pur ceo q'il clama la reversion com heir le purchacour a lui e a sa femme e a ses heirs e n'avoint especiauté qe tesmoigne etc. si fut agardé seisine de terre e il nent resceu etc.

Johan le fiutz Johan de Bereford ¹³ porta son bref d'entré vers un E. qe fit defaute apres defaute issi qe les tenemenz furent a perdre; e survynt un Thomas le fiutz Thomas ¹⁴ e dit qe Johan de Bereford ¹⁵ dona ceux tenemenz a Thomas son piere, qi heir il fut, e a E. sa femme e as heirs Thomas, issi qe E. vers qi le bref est ore porté n'ad qe fraunc tenement a terme de sa vie¹⁶; e la reversion a nous com a heir Thomas. E prioms qe la defaute etc. qe nous ne puissoms a nostre dreit ¹⁷ defendre estre resceu.

Herle. Quei avetz pur ascerter la court qe la reversion appent a vous?

Mig. Prest de averrer etc.

Hedon. E nous jugement, del hure q'il n'ount ren a prover lour dit etc. si noun vent,¹⁸ s'il ¹⁹ puissent par tant ceo jugement e nostre demande delaier.

¹ *Om.* apres defaute, *C, P, Q.* ² *For* etc. si noun *subs.* en especialté fors qe, *C; Sim., P, Q.* ³ *Om.* par quei, etc. *C, P, Q.* ⁴ vers, *P.* ⁵ tesmoigna, *Q.* ⁶ *Om.* et, *R.* ⁷ *For* ovesqe cel *subs.* en cel pleé, *P.* ⁸ *Om.* et en . . . purchacé, *C, P, Q.* ⁹ *Om.* *C, Q.* ¹⁰ *Om.* si noun vent, *P.* ¹¹ demaunde, *C, P, Q.* ¹² From *D* collated with *A* and *T.* There are two reports in *T*, of which the one on fo. 14 v° is distinguished as *T* (1) and the other on fo. 17 r° as *T* (2). The headnote is from *D.* ¹³ *Berr. A, Ber. T* (1), *Bereford T* (2). ¹⁴ *Om.* le fiutz Thomas, *T* (1). ¹⁵ *Berr. A, Ber. T* (1), *T* (2). ¹⁶ *Om.* de sa vie, *T* (2). ¹⁷ *sic*, *T* (2); *br', A, T* (1). ¹⁸ voet, *T* (1). ¹⁹ q il, *A.*

father and to his wife who has made default after default, and to the heirs of your father, as you have said ; and you show nothing of this, which naturally is a matter of specialty, except mere words. Wherefore etc.

Miggeley. The infant who prays to be received is within age, and the woman who makes default by collusion has the charter with her ; and the quitclaim witnesses that our father had fee and inheritance, and with that we wish to aver the purchase to be such as we have said, and [the land to have been] purchased in that way. Judgment.

BEREFORD, C.J. Since you have nothing which witnesses what you say except sale, the court awards that John recover his seisin.

II.

Entry where a man prayed to be received etc. And because he claimed the reversion as heir of the purchaser on a purchase to him and his wife and his heirs, and had no specialty which witnessed this, he was not received and seisin was awarded to the tenant.

John the son of John [le Bere] brought his writ of entry against one [Christine], who made default after default, so that the tenements were on the point of being lost. And one Thomas the son of Thomas intervened and said that John [le Bere] gave these tenements to Thomas his father, whose heir he was, and to [Christine] his wife and the heirs of Thomas, so that [Christine] against whom the writ is now brought had only frank tenement for the term of her life ; and that the reversion belonged to [him] as the heir of Thomas. And [he] prayed that the default etc. and that [he] might¹ be received to defend [his] right.

Herle. What have you to assure the court that the reversion belongs to you ?

Miggeley. Ready are we to aver it etc.

Hedon. And, seeing that they have nothing to prove what they say etc. except mere words, we ask judgment if they can thereby delay judgment [on the default] and our demand.

¹ The 'ne' in the French text seems to have been inserted in error.

Migg. mist avant une quitecleime fait a Thomas son piere e a ses heirs ou il n'avoit ¹ nul mencion de E.

Hedon. E nous jugement depuis qe la quitecleim ne prove mye ne ne tesmoigne mye ² quel estat E. avoit, fee ou terme de vie, ne ne prove la reversion estre a lui, si par tant etc.; e prioms seisine de terre.

Migg. Et nous jugement, del hure qe nous voloms averrer le purchaz estre *ut supra*, e en evidence de ceo mostroms a la court un fait qe tesmoigne le baron E. avoir fee pure etc. si nous ne devons estre resceu. Et d'autrepart celui qe prie de estre resceu est de deinz age, e la chartre par la quele nostre piere purchacea, si demoert vers la femme, la quele voet ore perdre ³ par collusion. Et la quele chartre voet e tesmoigne qe E. n'ad autre estat fors *ut supra*, par quei grant duresce serroit en ceo cas si nous ne fussoms resceu.

Ber. Por ceo qe vostre priere ⁴ si chiet ⁵ naturelement en especiauté ou vous n'avetz qe vente, si agarde la court qe Johan recovere sa seisine etc.

Mes ⁶ s'il ust clamé la reversion com ⁷ de son lees ou de son auncestre etc. ou ⁸ en douwere ou par ley d'Engleterre il serreit resceu sanz fait.

III.⁹

Ou il ne fu nent resceu sanz especiauté coment q'il fust heir etc.

Johan le fiz G. de la Bere porta sun bref d'entré vers Cristine qe fu femme Thomas de Albynton des tenemenz en Wyteney, la quele C. fist defaute apres defaute. Au jour qe le Cape fust retourné survynt Johan le fiz T. de Albynton, qe fust dedeinz age, e pria estre receu a defendre sun droit; qar il dit qe ceux tenemenz furent en la seisine G. de la Beere pere cestui Johan qe hors de sa seisine dona ceux tenemenz a T. sun pere e Cristiene sa femme e a lez heirs T.

Hedon. Quei avez de ceo?

Migg. Nous le voloms averrer.

Ber. N'est Johan enfant dedeinz age? Coment puet il estre partie a tiel averement? *quasi diceret* Noun.

Et pus *Migg.* mist avant un escrist qe voleit qe G. de la Bere avoit

¹ n'y avoit, *A*, ni avoit, *T* (1). ² *Om.* mye, *A*. ³ pleder, *D*. ⁴ piere, *T* (1), *T* (2). ⁵ si chiet, *T* (2). ⁶ mesme, *T* (1). ⁷ *Om.* com, *T* (2).
⁸ *Om.* *T* (2). ⁹ From *Y* (fo. 97 v^o). The words 'reuersum precedentis placiti' which refer to case 21 (ii) on p. 34 below are written in the margin opposite the headnote.

Miggeley put forward a quitclaim made to Thomas his father and his heirs, in which there was no mention of [Christine].

Hedon. We ask judgment if thereby etc. since the quitclaim is neither proof nor evidence of what estate [Christine] had, fee or for life, nor does it prove the reversion to be his. And we pray seisin of the land.

Miggeley. And on the ground that we wish to aver the purchase to have been as above stated and that we show to the court in evidence thereof a deed which witnesses that the husband of [Christine] had fee simple etc. we ask judgment if we ought not to be received. And besides, he who prays to be received is within age and the charter by which our father purchased remains with the woman, who now wishes to lose by collusion. And this charter says and witnesses that [Christine] had no other estate than is above stated, and it would therefore be a great hardship if in this case we were not received.

BEREFORD, C.J. For the reason that your prayer is in its nature a matter of specialty, and you have nothing but mere words [in support of it], the court awards that John recover his seisin etc.

But if he had claimed the reversion as on his own lease, or on that of his ancestor or in dower or by the law of England he would have been received without deed.

III.

Where an intervener was not received without specialty, although he was heir.

John the son of [John le] Bere brought his writ of entry against Christine the widow of Thomas of Abingdon of tenements in Witney. Christine made default after default. At the day when the Cape was returned, John the son of Thomas of Abingdon, who was within age, intervened and prayed to be received to defend his right; for he said that these tenements were in the seisin of [John] the father of this John le Bere, who out of his seisin gave them to Thomas his father and Christine his father's wife and the heirs of Thomas.

Hedon. What have you to show that?

Miggeley. We will aver it.

BEREFORD, C.J. Is not John within age? How can he be a party to such an averment? Surely he cannot.

And then *Miggeley* put forward a writing which said that [John]

relessé e quiteclamé tut le droit q'il avoit en ceux tenemenz, si nul en oust, a T. e ses heirs a touz jours.

Hedon. Par la ou Johan de Albynton prie estre receu a defendre sun droit par la reson du doun fet a T. son pere e C. sa femme e a les heirs T., e le fet q'il mette avant n'est pas prove de sun dist, demandoms jugement si par tiel prier estre receu deive nostre seisine targer.

Migg. Le fet tesmoigne qe le doun se fist a T. e ses heirs, issi qe le fee e le droit repose en la persone Johan, e ovesqe ceo il le voet averer par bon pais le doun.

Cristine fut demandé e ne vient pas.

Mugg. Vous avez Johan le fiz T. qe prie estre receu a defendre sun droit.

Bereford. S'il fust receu, jammes en ceste court ne serreit play de terre fini, qar le plus estrange du mounde serroit receu par vous a targer la seisine le demandant sanz moustrer fet qe tesmoigne sun dit ou especiauté de saunke qe lui doune title.

Hervy. Cristine fet defaute apres defaute, si agarde la court qe Johan rescovere sa seisine e C. en la mercy etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 52, Oxford.

John the son of John le Bere of Wytteneye offered himself on the fourth day against Christine the widow of Thomas of Abyndon of Wytteneye on a plea of one messuage in Wytteneye which he claims as his right etc. And she did not come, and the sheriff was ordered to take the messuage into the

21. HAY v. WHITE.

I.¹

Ad terminum qui preteriit ou un homme pria de estre resceu, e le demandant dit qe ceo serroit en abatement de soun bref etc. E furent au pais sur la cause de la resceite q'il travers fut au bref abatre.

Un homme porta son bref² *ad terminum qui preteriit* vers Beatrix qe fu la femme Richard le Wiche, e fut le bref tiel³ 'in que eadem Beatricia non habet ingressum nisi per R. patrem predicti etc. cuius heres ipse est qui illa⁴ ei dimisit ad terminum qui preteriit etc.' B.⁵

¹ From *D*, collated with *C, P, Q, R, T.* ² *Ins.* d'entré, *C, P, Q, R.* ³ *Om.*
e . . . tiel, *C, P, Q.* ⁴ illud, *C, P, Q, R.* ⁵ La femme, *C, P, Q, R.*

le Bere had released and quitclaimed all the right which he had in the tenements, if any he had, to Thomas and his heirs for ever.

Hedon. Whereas John of Abingdon prays to be received to defend his right by reason of the gift to Thomas his father and Christine his father's wife and the heirs of Thomas, and whereas the deed which he puts forward is not proof of his statement, we ask judgment if he ought to delay our seisin by such a prayer to be received.

Miggeley. The deed witnesses that the gift was made to Thomas and his heirs, so that the fee and the right repose in the person of John, and with that he wishes to aver the gift by the country.

Christine was called, but did not come.

Miggeley. You have here John the son of Thomas who prays to be received to defend his right.

BEREFORD, C.J. If he were received no plea of land in this court would ever be finished, for according to you the most complete stranger in the world would be received to delay a demandant's seisin without his showing a deed which witnessed his statement or specialty of blood, which gives him title.

STANTON, J. Christine makes default after default, so the court awards that John recover his seisin and that Christine be in mercy etc.

Note from the Record (*continued*).

king's hand and to summon him to be here at this day to hear judgment thereof etc. And the sheriff now witnesses the day of the taking etc. and that he summoned her etc. Therefore it is adjudged that John recover his seisin thereof against her by default and that Christine be in mercy etc.

21. HAY v. WHITE.¹

I.

Entry *ad terminum qui preteriit*. A man prayed to be received, and the demandant said that his receipt would be in abatement of the writ etc. Issue was joined, on the cause of the receipt, for it was a traverse to abate the writ.

A man brought his writ of entry *ad terminum qui preteriit* against Beatrice the widow of Richard le White. The writ ran, 'into which the same Beatrice has not entry unless by Richard his father whose heir he is, who demised those tenements to her for a term which is past.' Beatrice made default after default, and one William the

¹ The proper names are corrected by the record.

fit defaute apres defaute etc. e survynt un Willem le fiutz Richard le Wich¹ e dit qe son piere qi heir il fut si² fu seisi de mesme les tenemenz en son demene com de fee³ e murust seisi⁴ apres qi mort Willem entra com fiutz e heir etc. e assigna mesme⁵ les⁶ tenemenz a Beatrice⁷ en douwere, e issint tent B. en douwere de douwement nostre piere qi etc. e de nostre assignement e la reversion est⁸ a nous. Jugement⁹ e prioms estre¹⁰ resceu etc.

Denum. Resceu ne devetz estre, qar¹¹ nostre bref voet qe B. est entré par nostre piere qi heir etc¹² e issi estes vous e vostre piere auxi hors de degres¹³ par quei¹⁴ si vous fussez resceu, ceo serroit en abatement de nostre bref. Jugement etc.¹⁵

Herle. Nous avoms moustré coment la reversion a nous appent e prioms de estre resceu.

[*Herle.*¹⁶ Nous avoms dit qe nostre pere murust seisi en soun demene cum de fee, apres qi mort nous entrames cum heir¹⁷ e assignames etc. e issi est ceo nostre dreyt,¹⁸ e ele veot¹⁹ perdre par defaute. Jugement si nous ne devons estre resceu.]

Ston. Si B. fut en court e vousist²⁰ vouchen Willem q'ore prie estre¹⁰ resceu, le vouchen ne serreit²¹ soeffert,²² nent plus la priere.²³

*Berr.*²⁴ Il moustre deux chose; un est qe le dreit demurt en lui, un autre est qe B. est entré ceuz tenemenz com en douwere e de son assignement e du douwement son piere jadis son baroun, par quei il covent q'il maynteigne son dreit a force.

Herle. Nous voloms averrer qe l'estat qe B.²⁵ ad en ceuz tenemenz²⁶ si est en douwere²⁷ de douwement nostre piere etc. e de nostre assignement²⁸ e nent du lees vostre piere.

Denum. Si la court agarde qe vous puissetz²⁹ estre partie a tiele averrement,³⁰ nous respondroms volenters.³¹

Ber. Nous ne agardoms point q'il³² seit resceu, mes il tende de

¹ *Ins.* et pria estre resceu a defendre son dreit, *C*; *Sim.* *P*, *Q*; *Ins.* et pria estre resceu etc., *R*. ² *Om.* q'i . . . si, *C*, *P*, *Q*, *R*. ³ *Ins.* et de dreit, *P*, *Q*. ⁴ *Om.* e murust seisi, *C*, *P*, *Q*. ⁵ *Om.* *C*, *P*, *Q*, *R*. ⁶ ceuz, *C*, *P*, *Q*. ⁷ *Om.* a Beatrice, *C*, *P*, *Q*, *R*. ⁸ *Om.* est, *D*, *T*. ⁹ *Om.* de douwement . . . Jugement, *C*, *P*, *Q*; *Om.* jugement, *R*. ¹⁰ d'estre, *T*. ¹¹ *Om.* Resceu . . . quar, *C*, *P*, *Q*, *R*. ¹² *Om.* q'i heir etc., *C*, *P*, *Q*, *R*. ¹³ *For* issi estes . . . degres *subs.* vous n'estes pas en lez degrez, *C*; *Sim.* *P*, *Q*, *R*. ¹⁴ ou, *C*, *P*, *Q*; et, *R*. ¹⁵ *Om.* Jugement etc., *C*, *P*, *Q*, *R*. ¹⁶ This speech is substituted for the last one in *C*; *Sim.* *P*, *Q*, *R*. ¹⁷ *Om.* cum heir, *R*. ¹⁸ *For* ceo nostre dreit *subs.* le dreit a nous, *R*. ¹⁹ put, *P*, *R*. ²⁰ voloit, *C*, *P*, *R*. ²¹ *Ins.* pas, *C*, *P*, *Q*; *MS.* mie, *R*. ²² resceu, *C*, *P*, *Q*. ²³ *For* la priere *subs.* hic, *C*, *P*, *Q*, il estre resceu, *R*. ²⁴ This speech is omitted in *C*, *P*, *Q*, *R*. ²⁵ la femme, *C*, *P*, *Q*, *R*. ²⁶ *Om.* en ceuz tenemenz, *C*, *P*, *Q*, *R*. ²⁷ *Om.* en douwere, *R*. ²⁸ *Om.* de douwement . . . assignement, *C*, *P*, *Q*. ²⁹ *For* Si . . . puissetz *subs.* si vous agardez q'il deit estre resceu abatre nostre bref ou q'il put, *C*, *R*; *Sim.* *P*, *Q*, *but subs.* put *for* deit. ³⁰ *Ins.* encontre nous, *R*. ³¹ assez, *C*, *P*, *Q*, *R*. ³² s'il, *D*.

son of Richard le White intervened and said that his father, whose heir he was, was seised of the same tenements in his demesne as of fee and died seised. After his death William entered as son and heir etc. and assigned these same tenements to Beatrice in dower, and so Beatrice holds in dower of the endowment of [his] father, whose etc. and of [his own] assignment; and he said that the reversion belonged to him. He asked judgment of this and prayed to be received etc.

Denham. You ought not to be received, for our writ says that Beatrice entered by our father, whose heir etc. and so you and your father also are outside the degrees. Wherefore if you were received, it would be in abatement of our writ. Judgment etc.

Herle. We have shown how the reversion belongs to us, and we pray to be received.

[*Herle.*¹ We have said that our father died seised in his demesne as of fee, after whose death we entered as heir and assigned etc., and so this is our right, and the widow wishes to lose the tenement by default. Judgment if we ought not to be received.]

Stonore. If Beatrice were in court, and wished to vouch William, who now prays to be received, the voucher would not be allowed; no more should the prayer for receipt.

BEREFORD, C.J. He shows two things: one is that the right remains in him; the other is that Beatrice entered these tenements as in dower both on his assignment and on the endowment of his father, lately her husband, and therefore he must maintain his right.²

Herle. We will aver that the estate which Beatrice has in these tenements is in dower of the endowment of our father etc. and of our assignment, and not of your father's lease.

Denham. If the court award that you can be a party to such an averment we will answer willingly.

BEREFORD, C.J. We do not award that he be received. But he

¹ See note 16 opposite.

² The significance of the French words 'a force' at the end of his speech is doubtful.

averrer qe l'estat qe la femme ad si est etc. *ut supra*¹ e nient du lees vostre pierre etc. e a ceo covent il qe vous responez.²

Denum tendist³ d'averrer qe ele fut entré par son pierre e nent en douwere. Prest etc.

Herle le revers.

Et sic etc.⁴

[*Denom.*⁵ Qe nostre pierre lessa a terme qe passé est ; prest etc.

Et sic ad patriam.⁶

Ber. Ou est cely qe prie estre receu ? Est il d'age ?

Herle. Veet le issi.

Et fuit plene etatis. Et ceo fut demaundé pur la seurté trover⁷.]

II.⁸

Ou l'eir fust receu a defendre son droit nent resteant qe le bref voleit qe le lees se fist a la femme qe fist defaute etc.

Un W. porta sun bref d'entré vers Alice qe fu femme Richard le Blund de certeinz tenemenz en N. e dit en les queux ele n'oust entré si noun par G. sun pere qi heir il est qe ceo lessa al dite Alice a terme qe passé est. Alice fist defaute apres defaute. E pus survynt Willem fiz e heir Richard e dit qe le dit Richard jadis sun baron tient ses tenemenz e lui dowra, apres qi mort W. entra com fiz e heir e ses tenemenz en noun de dowere assigna a ceste A. E veit qe les tenemenz sunt en point de estre perduz e prie de estre receu a defendre sun droit.

Denham. Receu ne devez estre, qar nostre bref suppose un lees estre fet a Alice a terme etc. le quel nous voloms averer. E s'il fust receu ceo serroit al abatement de nostre bref. E demandoms jugement.

Herle. Ceo est nostre droit e nous le veoms estre en point de estre perdu, e prioms de estre receu etc. E nostre pere morust seisi de ses tenemenz, apres qi mort nous entrames com fiz e assignames ceo dowere a Alice e qe pus ceo temps G. vostre auncestre nul lees ne fist, prest del averer.

Denham. Nous sumes prest de averer nostre bref.

Ber. Il sunt prest de averer qe la reversion a eux appent *per*

¹ *For* etc. *ut supra subs.* en dower, *C*; *Sim.* *P*, *Q*,^{*}*R*. ² *For* a ceo . . . responez *subs.* ove ceo il trovera seurté dez issues en le meen tens, *C*; *Sim.* *P*, *Q*, *R*. ³ *Toud'. D.* ⁴ *Om.* *Denum* tendist . . . sic etc., *C*, *P*, *Q*, *R*. ⁵ These speeches are substituted for the last two speeches in *R*; *Sim.*, but with variations, in *C*, *P*, *Q*. ⁶ *Om.* prest etc. . . patriam, *C*, *P*, *Q*. ⁷ *For Ber.* Ou est . . . trover *subs.* Est cely qe prie de age ? Et fuit uisus propter securitatem, *C*; *Sim.* *P*, *Q*. ⁸ From *Y* (fo. 97 r^o).

offers to aver that the estate which the woman has is (*as above stated*) and not of the lease of your father, and you must answer that.

Denham offered to aver that she entered by his father, and not in dower. Ready etc.

Herle the reverse.

And so to the country.

[*Denham*.¹ Ready are we to aver that our father leased for a term which is passed.

And so to the country.

BEREFORD, C.J. Where is he who prays to be received? Is he of age?

Herle. Here he is.

And he was of full age. And this was asked on account of his finding surety.]

II.

Where the heir was received to defend his right, notwithstanding that the writ said that the lease was made to the woman who made default etc.

One [Thomas] brought his writ of entry against [Beatrice] the widow of Richard le [White] for certain tenements in N., and said 'into which she has not entry unless by [Richard del Hay] his father whose heir he is, who leased them to the said [Beatrice] for a term which is past. [Beatrice] made default after default; and then intervened William the son and heir of Richard and said that this Richard [le White] lately her husband held these tenements and endowed her. After his death William entered as son and heir and assigned these tenements to her in the name of dower. And William seeing that the tenements are on the point of being lost prays to be received to defend his right.

Denham. You ought not to be received, for our writ supposes a lease to have been made to [Beatrice] for a term etc., and this we will aver. If he were received it would be in abatement of our writ. We ask judgment.

Herle. This is our right which we see is on the point of being lost, and we pray to be received. Our father died seised of these tenements. After his death we entered as son [and heir] and assigned them as dower to [Beatrice], and we are ready to aver that after this [Richard del Hay] your ancestor made no lease.

Denham. We are ready to aver our writ.

BEREFORD, C.J. They are ready to aver that the reversion belongs

¹ See note 5 opposite.

racionem supradictam e qe lour auncestre morust seisi *ut prius*, qar uncore W. le fiz Richard n'est mie partie a vous tanke qe l'enqueste die pur lui. Et si l'enqueste die encontre lui, donke rescovrez vous seisine de terre ensemblement ove voz damages del meen temps.

Et sic ad patriam. Et Willelmus filius Ricardi inuenit plegios de exitibus medii temporis etc.

III.¹

Un A. porta bref d'entré *ad terminum qui preteriit* vers Isabel in que etc. Isabel fit defaute. Survynt un Johan e dit qe Willam son pere morust seisi, apres qi mort il entra com fitz e heir e assigna ceux tenemenz en dower a Isabel. E pria estre resceu a defendre son dreit.

Denom. Nostre bref est deinz les degres, a qi vous estes estrange. E si vous fustes resceu, vous abaterez nostre bref. Estre ceo si Isabel eust venu en court, ele vous poeit vouchier, par quei etc.

Herle. Si par collusioun entre le demaundaunt e le tenaunt le bref seit malement conceu en l'entré, ceo ne nous tendra mye etc. Estre ceo le fet purra acorder al ley, qe Isabel entra par son pere e qe l'estat soit chaungé, par mutacioun les tenemenz vindrent en sa mayn, par quei dure serreit si nous ne serroms mye resceu.

E pur ceo q'il alleggea q'il fut seisi e assigna, le demaundaunt fut chacé a dire le quel ele entra par soun [pere] com le bref voleit e ne mye par l'assignement Johan. E Johan trova seorté a respondre des issues en le meen temps.

IV.²

Nora.—qe homme trouvera seurté en cas quant l'estat le tenant est countrepledé, ou si l'averement se joynt sur la receite ; mes si l'estat le tenant soit granté et cely qe prie estre receu soit³ receu il ne trouvera mye.

¹ From *M*.

² This note is from *R*.

³ MS. 'sit.'

to them (for the reason above mentioned) and that their ancestor died seised (as before stated). William the son of Richard is not yet a party to [your plea] until the enquest declares for him. If the enquest declares against him then you will recover seisin of the land together with your damages for the mean time.

And so they went to a jury. And William the son of Richard found pledges for the issues of the land in the mean time.

III.

One [Thomas] brought his writ of entry *ad terminum qui preterit* against [Beatrice] into which etc. [Beatrice] made default. One [William] came and said that [Richard] his father died seised, after whose death he entered as son and heir and assigned these tenements to [Beatrice] in dower; and he prayed to be received to defend his right.

Denham. Our writ is within the degrees, and you are a stranger to it. If you were received you would abate our writ. Besides, if [Beatrice] had come into court, she could [not] have vouched you; therefore etc.

Herle. If by collusion between the demandant and the tenant, the writ be badly conceived in the entry, that should not affect us etc. Besides this, the facts may accord with the equity of the case¹; namely that [Beatrice] entered by [the intervener's] father, and [it was] because her estate [in dower] was changed, that the tenements came by the mutation into her hands.² Therefore it would be hard if we were not received.

And because [the intervener alleged] that he was seised and assigned, the demandant was driven to say [that] she entered by his father as the writ stated and not by the assignment of [William]; and [William] found surety to answer for the issues in the mean time.

IV.

NOTE.—A man will find surety where the estate of the tenant is counterpleaded, or if the averment is joined upon the receipt [of an intervener]; but if the estate of the tenant be granted, and he who prays to be received is received, he will not find surety.

¹ It seems from the context that this is the meaning of 'ley'; but the meaning of the whole passage remains obscure.

² The translation is very doubtful. It seems to be suggested that Beatrice

when holding in dower may have been disseised by the demandant's father, who then granted her a term of years. A tenant in dower may be said to enter by her husband.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 72d, Cumberland.

Thomas del Hay of Newcastle-on-Tyne by Robert of Hukewell his attorney offered himself on the fourth day against Beatrice the widow of Richard le White of Comermuth¹ on a plea of one messuage in Cokermuth, which he claims as his right and inheritance, and into which Beatrice has not entry unless by Richard del Hay the father of Thomas whose heir he is, who demised it to her for a term which is passed etc. And she did not come, and she heretofore made default here, to wit on the quindene of the Holy Trinity 2 Ed. II., after she had been summoned etc. so that, process being continued on either side (*hinc inde*) the sheriff was ordered that he do not fail on account of the liberty of Cokermouth from taking the messuage into the king's hand; and that the day etc., and that he summon her that she be here three weeks after Easter 3 Ed. II. At which day the sheriff witnessed the day of taking etc. and that he summoned her etc. And then came as well Thomas as Beatrice by their attorneys. And Thomas betakes himself precisely to the default which Beatrice made at the quindene of the Holy Trinity etc. after she had been summoned etc. And Beatrice then waged her law to him thereof etc. and she had a day for making her law here, the quindene of St. Michael next following. At which day Beatrice caused herself to be essoigned against Thomas on the plea. And they had a day here on either side by Beatrice's essoignor, at this day, to wit the quindene of St. Hilary. And upon this comes one William the son of Richard

22. BROKE v. LOVEDEN.

I.²

Voucher a garant ou le fet ne voleit fors de un mes et la demaunde fut de un mes et de terre.

Un bref fut porté vers un tenaunt³ qe voucha a garaunt etc.⁴ Le vouché vint en court et demaunda par⁵ qey il ly voucha.

Hedon mist avaunt une quitecleim⁶ qe voleit q'il avoit relessé un mies etc. ove les appurtenaunces⁷ et de cel mies fut il obligé a la garantie.⁸

Denum. Il met avaunt fet qe veut⁹ qe nous ly devoms¹⁰ garanter¹¹ un mies, et il nous ad vouché¹² de un mies et de vij acres de terre. Quant al mies nous vous dioms qe¹³ garanter ne devoms, qar la

¹ Probably an error for Cokermuth. ² From *R* collated with *C*, *P*, *Q*. The headnote is from *C*. ³ *Ins.* de ij mees et de vij acres de terre, *C*, *Q*; *Sim.* *P*. ⁴ *Om.* qe . . . etc., *C*, *P*, *Q*. ⁵ *pur*, *R*. ⁶ *relesse*, *C*, *P*, *Q*. ⁷ *Om.* etc. ove les appurtenaunces, *C*, *P*, *Q*. ⁸ *For* et de . . . garantie *subs.* et se obliga a la garantie, *C*, *P*, *Q*. ⁹ *testmoigne*, *C*. ¹⁰ *Om.* devoms, *C*, *P*, *Q*. ¹¹ *garranteroms*, *C*, *P*, *Q*. *Ins.* de, *P*, *Q*. ¹² *For* il . . . vouché *subs.* il vouche, *C*, *P*, *Q*. ¹³ *Om.* nous . . . qe, *C*, *P*, *Q*.

Note from the Record (*continued*).

le White, and says that the messuage is his right and inheritance; for in truth he says that Richard le White the father of William whose heir he is died seised of the messuage in his demesne as of fee, after whose death William entered into the same as his son and heir, and afterwards assigned the messuage to Beatrice to hold in name of dower etc. Whereupon he prays that by the default of Beatrice he do not lose the messuage, but that he be received etc. to the defence of his right in this behalf.

And Thomas says that William ought not to be received to the defence of the tenement, for he says that Beatrice on the day of the purchase of his writ, to wit 3 November, 2 Ed. II., held the messuage by the demise of Richard del Hay the father of Thomas, whose heir etc., as in his writ is contained, and this he is ready to aver etc. Whereupon he asks judgment and that his seisin be adjudged to him on the default etc.

And William says that Beatrice on the day of the purchase of the writ etc. held the messuage in name of dower and by the assignment of William as is aforesaid and not by the demise of Richard del Hay as Thomas says. And this he is ready to aver by the country.

Issue is joined and a *venire facias* awarded here for the quindene of Trinity. And upon this William found three mainpernors, who mainprized for William answering to Thomas of the issues of the messuage in the mean time, if it should happen that the jury should pass against William etc.¹

22. BROKE v. LOVEDEN.²

I.

Voucher to warranty, where the deed spoke of one messuage only, and the demand was of one messuage and land.

A writ was brought against a tenant [of a messuage and seven acres of land] who vouched to warranty etc. The vouchee came into court and asked by what he vouched him.

Hedon put forward a quitclaim which stated that the vouchee had released a messuage etc. with the appurtenances; and that he was bound to the warranty of that messuage.

Denham. He puts forward a deed which states that we ought to warrant to him one messuage, and he has vouched us of one messuage and seven acres of land. As to the messuage, we tell you that we ought not to warrant, for the quitclaim was not made in his

¹ Process is continued until three weeks from Easter, 5 Edw. II., after which no further proceedings are en-

rolled.

² This is Fitz. *Voucher*, 244.

quitecleime ne fut pas fet en sa seisine, prest etc.¹ Et quant a l'autre nous demaundoms jugement, desicom la demaunde est fet comme² de³ deus gros, et il n'ad rien de nous⁴ qe nous lie a la garrantie. Demaundoms jugement.

Hedon. Ceo q'il apele mies et⁵ vij acres de terre, ceo est compris dedens le mies, et de ceo est il obligé a la garantie⁶ par son fet. Jugement etc.⁷

Denum. Et nous jugement desicum la demaunde est de deux gros, *scil.* de mies et de terre, et vous n'avet rientz qe⁸ lie a la garantie de la terre. Jugement.

Wilby, pur le demaundant, pria seisine de terre.⁹

Herle. Put estre qe en la seisine le auncestre¹⁰ partie fut mies partie terre, et pus ad le tenaunt ensemble le un et l'autre¹¹ et ensi tut mies.¹² Pur qey donqe ne deit il garanter coment qe le demaundant demaunde l'estat son auncestre.¹³

Denum. Donqe pout il aver respoundu al demaundant et aver dit¹⁴ q'il ne fut tenaunt si noun¹⁵ de mies et de ceo aver vouché?

Berr. Il tendent d'averer qe la terre est compris deyn le mies et vous estes tenuz¹⁶ a garanter les¹⁷ mies ove les appurtenaunces coment qe la demaunde soit fete par mies et par terre. Qey responez vous a ceo?¹⁸

*Scrop.*¹⁹ Vous demaundez une carué de terre et une bové de terre,²⁰ homme le tendreit pur deux gros et non pas l'un appurtenant a l'autre.²¹ Auxi de ceste part²² la ou il demaunde mies et terre com deux gros, n'est mie appurtenaunt²³.

Berr. Vous le avez vouché del²⁴ mies et de la²⁵ terre, et ces sount deux, et le fet qe vous mettez avaunt ne veut garaunter²⁶ mes le²⁷ mies, par quey put estre q'il garantirait le mies ove les appurtenaunces et nen la terre, et ensy serreit²⁸ il a meschef, oue²⁹ vous mesmes porrez aver abatu le bref.

¹ Om. prest etc., C, P, Q. ² Om. comme, C, P, Q. ³ en, C, P, Q. ⁴ Om. de nous, C, P, Q. ⁵ Om. mies et, C, P, Q. ⁶ Ins. etc., Q. ⁷ Om. a la garantie, C, P, Q. ⁸ Ins. nous, C, P, Q. ⁹ Om. *Wilby* . . . terre, C, P, Q. ¹⁰ demaundant, C, P, Q. ¹¹ Om. le un et lautre, C, P, Q. ¹² For ensi tut mies *subs.* ad fet mes, C, Q; il ad fet mencion, P. ¹³ For pur quey . . . auncestre *subs.* coment qe le demandant demande de l'estat soun auncestre, pur quei ne deit il garanter, C; *Sim.* P, Q. ¹⁴ Om. et aver dit, C, P, Q. ¹⁵ fors, C, P, Q. ¹⁶ lyé, P, Q. ¹⁷ For a garaunter les *subs.* a la garrauntie del, C, P, Q. ¹⁸ Om. qey . . . ceo, C, P, Q. ¹⁹ Ins. si, C. ²⁰ Om. de terre, C, P, Q. ²¹ For pas l'un . . . l'autre *subs.* par un, C. ²² auxi yci, C, P, Q. ²³ For n'est mie appurtenaunt *subs.* et l'un n'est mie appurtenant al autre, C; *Sim.* P, Q. ²⁴ de, C, P, Q. ²⁵ Om. la, C, P, Q. ²⁶ ne garraunte, P. ²⁷ for de, C; fors qe de, P; fors de, Q. ²⁸ For ensy serreit *subs.* issi le mettreit, C, Q; *Sim.* P. ²⁹ ou, C, Q; la ou, P.

seisin; and ready etc. And as to the rest we ask judgment inasmuch as the demand is made as of two grosses, and he has nothing of us which binds us to the warranty. We ask judgment.

Hedon. What he calls a messuage and seven acres of land is comprised in the messuage, and he is bound to the warranty of that by his deed. Judgment etc.

Denham. And we ask judgment, because the demand is of two grosses, that is to say, of a messuage and land; and you have nothing which binds us to warrant the land. Judgment.

*Willoughby*¹ (for the demandant) prayed seisin of the land.

Herle. It may be that in the seisin of the ancestor, part was messuage and part land; and afterwards the tenant had the two together, and as all one messuage. Why then should he not warrant, even though the demandant demands the estate of his ancestor?

Denham. In that case the tenant would have answered the demandant, and said that he was tenant of a messuage only, and could have vouched us of that.

BEREFORD, C.J. He offers to aver that the land is comprised in the messuage. And you are bound to warrant the messuage with the appurtenances, even though the demand is made by messuage and land. What do you reply to that?

Scrope. [If] you make your demand of a carucate of land and a bovate of land, they will be taken for two grosses, and not for one gross appurtenant to the other. So in this case, in which they demand a messuage and land as two grosses, one will not be taken as appurtenant to the other.

BEREFORD, C.J. You have vouched him of the messuage and the land, and these are two things, and the deed which you produce speaks of warranting the messuage only. Therefore it might be that he could warrant the messuage with its appurtenance, but not the land; and thus there would be trouble for him, where you yourself might have abated the writ.

¹ It will be noticed that this speech occurs in one manuscript only.

II.¹

Ou le tenant demanda la garantie de un mees e vij acres de terre e le fet ne voleit q'il garantist qe un mees.

Peres le fiz Simond Broke porta un bref d'entré vèrs W. le fiz Willem de Loueren e Emme sa femme e demanda un mees e vij acres de terre etc. B. voucha a garant C.

Hedon. Quei avez de nous lier a la garantie ?

Lauf. mist avant une especiauté qe voleit qe A. pere C. avoit relessé e quiteclamé a N. pere B.² un mees e xxvj acres de terre ove touz les profitz e les comoditez etc. e obligea luy e ses heirs a garantir le mees ove les appurtenans.

W. Denham. E nous jugement de ceo voucher, desicom il nous voucha de un mees e de vij acres de terre, e lour especiauté ne voet qe un mes, par quei il nous bient³ lier a la garantie qe un mees ove les appurtenances. Jugement etc.

Lauf. Les vij acres compris, prest etc.

W. Denham. Un gros ne puet estre appurtenant a autre ; qar jeo pose q'il portast un bref e demandast mees terre pree pasture etc., e le tenant voucha a garant, e pur lui lier a la garantie meist avant especiauté qe voleit q'il garantist un mees ove les appurtenanz, jeo entenke qe par tiel fet il ne liereit a la garantie de autre chose qe le mees.

Scrop. Jeo pose qe une bové de terre soit appurtenant⁴ au mees e le bref soit porté de un mees ove les appurtenanz, e soit mis en la vewe la bové ; par tant ne abatera mie le bref, tut puisse la bové estre un gros par sey, del heure qe jeo voille averer qe la bové est appurtenant au mies. Auxi par de cea.

H. Scrop. Jeo pose quant l'auncestre B. purchasa, qe le mees fust par sey un gros e la terre un altre gros, e pus eust esté clos la terre en le mies ; e pus l'auncestre C. eust relessé e quiteclamé le

¹ From Y (fo. 98 v°).

² See footnote 2 on the opposite page.

³ See footnote 3 on the opposite page.

⁴ *Sic.*

II.

Where the tenant demanded warranty of a messuage and seven acres of land, and the deed, by which he warranted, said that he would warrant one messuage only.

Peter the son of Simon Broke brought a writ of entry against William the son of William of Louden¹ and Emma his wife and demanded one messuage and seven acres of land etc. William vouched one [Robert] to warranty.

Hedon. What have you to bind us to the warranty?

Laufare put forward a specialty which stated that A. the father of [Robert] had released and quitclaimed to [William] the father of [William]² one messuage and twenty-six acres of land with all the profits and commodities etc., and had bound himself and his heirs to warrant the messuage with the appurtenances.

W. Denham. We ask judgment of this voucher, for he vouches us of a messuage and seven acres of land, and their specialty mentions one messuage only, and by this they can³ only bind us to warrant one messuage with the appurtenances. Judgment etc.

Laufare. The seven acres are comprised in the messuage.

W. Denham. One gross cannot be appurtenant to another; suppose that he brought a writ and demanded messuage, land, meadow, pasture etc., and the tenant vouched to warranty, and in order to bind the vouchee thereto put forward a specialty, which said that he would warrant one messuage with the appurtenances. The tenant would not, I think, bind him to the warranty of anything but the messuage.

Scrope. Suppose that a bovate of land be appurtenant to the messuage, and the writ be brought of one messuage with the appurtenances, and the bovate be put in view. The writ would not abate thereby, even though the bovate might be a gross by itself, seeing that I should be willing to aver that the bovate is appurtenant to the messuage. Similarly in this case.

SCROPE, J. Suppose that when the ancestor purchased, the messuage by itself was one gross, and the land another; and that afterwards the land had been enclosed within the messuage, and that afterwards the ancestor of the [vouchee] had released and quitclaimed the messuage

¹ The father and son are afterwards described in the report by the initials N. and B.

² The record shows that the specialty

was granted by the vouchee himself to William and Emma and their heirs.

³ The French word 'bier' is generally used to mean 'to wish.'

mees ove les appurtenans e obligé lui e ses heirs a la garantie del mees ove les appurtenans. Jeo entenke qe le fet serroit assez suffisant pur lier a la garantie.

Bereford. Mes jeo pòse qe le mees soit purchacé de un homme e la terre de un autre. E veez si en tieu cas la terre soit appurtenant au mees.

Denham. Il nous ont vouché de un mees e vij acres de terre, e le fet par quei il nous vouchent nous ne lye mes a garanter un mees etc. sanz ceo faire mencion de la terre. E demandoms jugement etc.

Laufare. Les vij acres compris etc.

Bereford. N'avez meismes accepté le mees un gros par sey, e la terre un altre gros par sey en tant com vous avez vouché? Coment volez vous ore fere les deus grosses un gros, la ou vous poez avoir abatu sun bref par dire qe les vij acres sunt contenuz en le mies e issi un gros?

W. Denham. Si nous voussisoms entrer en la garantie e nous vouchissoms outre, bone response serroit a nostre garrant dire, Vous nous avez vouché de un mies e vij acres de terre e jeo ne vous sui tenu a garanter qe un mees *tantum* par mon fet, *ergo* nous averom vers vous mesme le response.

Laufare. Le garant auxi bien puet abatre le bref com le tenant.

Bereford. Vous dites mal. Le garant ne puet jammes abatre le bref qe le tenant ad affermé bon.

Denham. Sire, la ou B. nous voet lier a la garantie par une clause de garantie contenu en un quitecleim, a ceo responoms nous e dioms qe N. pere B. ne fust seisi de ceu mies le jour de la confeccion de la quitecleime, e prest del averer.

Et alii contrarium.

Et quant a vij acres demoroms en voz jugemenz.

Bereford. Attendez voz jugemenz a trois semeines de Pasche.

with the appurtenances and had bound himself and his heirs to warrant the messuage with the appurtenances. I think that his deed would be sufficient to bind him to the warranty.

BEREFORD, C.J. But suppose that the messuage were purchased of one man and the land of another. Consider if the land is appurtenant to the messuage in that case.

Denham. They have vouched us of one messuage and seven acres of land, and the deed by which they vouch us binds us to warrant one messuage etc. only and makes no mention of the land. We ask judgment etc.

Laufare. The seven acres are comprised in the messuage.

BEREFORD, C.J. Have you not accepted the messuage as a gross by itself and the land as another gross by itself by vouching to warranty? How can you now make the two grosses one gross when you could have abated his writ by saying that the seven acres are contained in the messuage, and the messuage and acres are therefore one gross?

W. Denham. If we were willing to enter into the warranty and we were to vouch over, it would be a good answer to our voucher to say, You have vouched us of one messuage and seven acres of land, but I am only bound to warrant to you one messuage by my deed. Therefore we ought to have the same answer against you.

Laufare. The vouchee can abate the writ just as well as the tenant.

BEREFORD, C.J. You are wrong. The vouchee can never abate the writ, which the tenant has affirmed as good.

Denham. Sir, whereas [William] wishes to bind us to warranty by a clause of warranty in a quitclaim, we make answer to that and say that [William] the father of [William] was not seised of that messuage on the day when the quitclaim was made, and ready are we to aver this.

And the others to the contrary.

Denham (continuing). And as to the seven acres we will abide by your judgment.

BEREFORD, C.J. Wait for your judgment till three weeks after Easter.

III.¹

Voucher, ou il ne accorda al especiauté.

Bref fut porté vers un A. de un mees ij acres de terre, qe voucha a garraunt un T. qe vint en court e demaunda par quei etc. Et le tenaunt mist avaunt reles qe voleit garranter del mees sanz plus.

Denom. Il ad vouché de mees e de terre, e le fet ne veot forsque garranter del mees; par quei nous prioms estre assoutz en dreit de vij acres de terre.

Scrop. La terre est deinz le mees e appendaunt al mees, e le fet veot garranter de mees ove les appurtenaunces.

Denom. Desicom il ad vouché del mees e de la terre com de ij grosses, e le fet ne vous lie pas quant a la terre, jugement.

Ber. Si le mees e la terre seient tut un, vous puissez aver abatu le bref, pur ceo q'il demaunde une chose ij fietz.

Scrop. Put estre qe le mees e la terre furent ij grosses e q'en nostre seisine tut est fet un gros, e en cel estat il nous relessa e obligea ly etc. Et depus qe nous sumes tenaunt de sa demaunde, e nous ne pooms allegger noun tenure, qe nous le pooms doner autre tenaunt, par quei il nous convendra voucher solonc ceo q'il fit sa demaunde.

Ber. La demaunde fut fet vers vous de mees e de terre com de ij grosses, e vous ne acceptez pas celi, l'avez vouché. Et si vous eiez respoundu folement a sa demaunde, entendez vous gettre tiel meschief sur un garaunt? *quasi diceret*, Noun.

Ideo etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 23, Lincoln.

Peter, the son of Simon Brok, by his attorney demands against William the son of William of Loueden (and ² Emma his wife) one messuage and seven acres of land in Sutton ³ in Holand as his right and inheritance, and into which William and Emma have not entry unless after the demise which Hubert Brok, Peter's grandfather, whose heir he is, made thereof to Robert Aungeuyn for a term which has passed etc.⁴ And whereupon he says that Hubert was seised of the tenements in his demesne as of fee and right in time of peace in the time of Hen. III., taking thereof the profits to the value etc. and from Hubert the right etc. descended to one Simon as son and heir; and from Simon the right etc. descended to Peter who now demands as son and heir; and into which etc. And thereof he brings suit etc.

¹ From *M.* ² The words 'et Emmam uxorem eius' are interlineated.

³ This is probably Long Sutton near Lutton. ⁴ The word 'cras' is here written in the margin of the roll.

III.

Where the voucher was not in accord with the specialty.

A writ was brought against one A. of a messuage and [seven] acres of land. A. vouched to warranty one T. who came into court and asked whereby etc. The tenant put forward a release, which spoke of warranting the messuage without more.

Denham. He has vouched us of a messuage and land, and the deed speaks of warranting the messuage only. Wherefore we pray to be excused as regards the seven acres of land.

Scrope. The land is comprised in the messuage and appendant to it; and the deed speaks of warranting the messuage with the appurtenances.

Denham. Inasmuch as he has vouched us of the messuage and the land, as of two grosses, and the deed does not bind [us] as regards the land, [we ask] judgment.

BEREFORD, C.J. If the messuage and the land were all one, you could have abated the writ because he demands one thing twice.

Scrope. It may be that the messuage and land were once two grosses, and that in our seisin they were made one gross, and in that state he released to us, and bound himself etc. And since we are tenant of his demand and we cannot allege nontenure, because we cannot give him another tenant, we must vouch, according as the demand is made.

BEREFORD, C.J. The demand was made against you of a messuage and land as of two grosses and [you have accepted that¹ and vouched him]. So if you have answered his demand foolishly, do you think to cast the mischief upon the vouchee? I think not.

Therefore etc.

Note from the Record (*continued*).

And William and Emma by William of Sutton their attorney come, and they heretofore vouched to warranty Robert le Foucher, who now comes by summons by William of Horblyng his attorney; and he asks that it may be shown to him, by what he ought to warrant to them etc.

And William and Emma proffer a certain writing under the name of Robert which witnesses that Robert granted remised and altogether quit-claimed for himself and his heirs to William and Emma and their heirs all the right and claim which he had in one messuage and twenty-five acres of land in the town aforesaid and the town of Lutton; and bound himself and his heirs to warrant to them the messuage with the appurtenances.

¹ The text is corrupt here, and is not easily amended.

Note from the Record (*continued*).

And Robert says that by reason of the writing he is not bound to warrant the tenements to [them]; for he says, as to the messuage etc. that William and Emma at the time of the making of the writing were not in seisin of the messuage; and of this he puts himself on the country.

Issue is joined and a *uenire facias* awarded here for the octave or Trinity.

And as to the land etc. Robert says that he ought not to warrant that land to him, especially since in the writing by which they strive to bind him to warranty, it is not contained that Robert ought to warrant to them any land etc. except only the messuage etc. Whereupon he asks judgment.

23. LEIGHTON v. HEGHAM.

I.¹

Entré *ad terminum qui preteriit* ou ij femmes ove lour barouns porterent le bref, et fierent la descent auxi avant a lez barouns cum a lez femmes, et le bref se abatit.

Deux homes ove² lour femmes porterent bref d'entré *ad terminum qui preteriit*³ Et fut le bref:—et que post terminum predictum prefatis A. et B. uxori eius et D. et E. uxori eius⁴ reuerti debent.

Herle. Il unt⁵ counté qe ceo est le⁶ dreit lour femmes en supposant q'il ne unt fors qe⁷ del dreit lour femmes, et pus unt fet⁸ auxi avant la reversion⁹ a eux com a lour femmes en supposant q'il unt owel estat ove lour femmes.¹⁰ Jugement du bref.

Berr. Coment put la reversion estre as femmes soulement¹¹ tant cum¹² il sunt covertz dez barons,¹³ car la reversion del demene put estre as barouns¹⁴ coment qe la reversion del dreit seit as femmes?

*Herle.*¹⁵ Auxi com la descent est en le dreit, auxi est¹⁶ la reversion; mes si yl eussent fete la descent a lez barouns et a lez femmes la descent eust¹⁷ esté¹⁸ maveyse, *eadem racione* la reversion de pus qe la reversion¹⁹ est en le dreit.

Hervy. Il demande jugement du bref pur ceo qe vous lyez²⁰ la

¹ From C, collated with P, Q, R.

² et, P, Q, R.

³ *Ins.* vers le B, R.

⁴ *Om.* et D. . . . eius, R. ⁵ *Om.* unt, Q. ⁶ del, R. ⁷ si noun, P. *Om.* qe, Q.

⁸ *For* et . . . fet *subs.* et pus lient la reversion, R. ⁹ *Om.* la reversion, R.

¹⁰ *Ins.* soul, R. ¹¹ *Om.* soulement, R. ¹² tange, P, Q, R. ¹³ *Ins.* si ceo ne

seit a les barouns, R. ¹⁴ *Ins.* ove lour femmes, R. ¹⁵ Hertep', R. ¹⁶ *Om.* est, P.

¹⁷ *Om.* eust, P, Q, R. ¹⁸ serroit, P, Q, R. ¹⁹ *Om.* la reversion, *Ins.* lun et

laautre, R. ²⁰ avez lié, R.

Note from the Record (*continued*).

And William and Emma say that Robert cannot escape from (*non potest diffugere quin*) warranting to them, for they say that the land demanded against them is contained and is within the precinct of the messuage and is of its appurtenances as parcel etc. and this they are ready to aver. And they ask judgment etc.

A day is given them to hear their judgment thereof here, at the aforesaid term etc., saving to the parties their arguments (*rationibus suis*) etc.

The same day is given to Peter the demandant etc.

23. LEIGHTON *v.* HEGHAM.

I.

Entry *ad terminum qui preterit*, where two women with their husbands brought the writ and made the descent as well to the husbands as the wives, and the writ abated.

Two men with their wives brought a writ of entry *ad terminum qui preterit*, and the writ ran, ‘and which after the term aforesaid ought to revert to the aforesaid A. and B. his wife and D. and E. his wife.’

Herle. They have counted that this is the right of their wives, so supposing that the husbands have nothing except in right of their wives, and then they have made the reversion¹ as well to the husbands as to their wives, so supposing that they have an equal estate with their wives. Judgment of the writ.

BEREFORD, C.J. How can the reversion be to the wives alone, whilst they are covert? The reversion of the demesne² can be to the husbands [with their wives], although the reversion of the right belongs to the wives.

Herle. As the descent is in the right, so also is the reversion. But if they had made the descent to the husbands and to the wives, the descent would have been bad. For a like reason the reversion is bad, since [both] reversion [and descent] are in the right.

STANTON, J. He asks judgment of the writ, because you have

¹ By the reversion the clause in the writ is meant which contains the words ‘et que . . . reuerti debent.’

² That is to say, the possessory estate.

reversioun¹ auxi bien² a lez barouns com a lez femmes, ou le barouns ne unt nul dreit com le count prove.³ Si agarde la court qe vous ne preignez riens par vostre bref.

II.⁴

Entré a terme qe passé est ou le bref lia la reversion en commune, auxi bien as barouns com a femmes. Et le bref se abatist.

Deux hommes et lour femmes porterunt lour bref *ad terminum qui preteriit* et counterent⁵ de la seisine l'auncestre⁶ des femmes et⁷ du lees fait par luy etc. Et le bref voet 'Et que post predictum terminum prefatis A. B. C. et D. reuerti debent etc.'

Hunt. Il ount counté et demaundé ceaux tenemenz com du dreit lour femmes, et pus liount la reversion auxi bien as barouns com a les⁸ femmes, en supposaut q'il ount owel estat ove lour femmes. Jugement du bref.

Berr. Coment put la reversion estre soul a les femmes, par taunt q'il eient barouns, qar la reversion du⁹ demene poet estre as barouns coment qe la reversion soit entendu en¹⁰ lour femmes.

Hunt. Auxi com la descente est en le dreit, auxi est la reversion ; mes s'il eussent counté et fait lour descente en commune, la descente serroit malveys, par mesme la resoun la reversion fait en commune qe lie en le dreit¹¹ fait le bref malveys.

Hervi. Pur ceo qe le bref lie la reversion en commune, ou il demaundent com du¹² dreit les femes, auxi com il piert par lour counte, si agarde la court q'il ne preignent rien par lour bref, eynz seient en une bone mercie etc.

Mes le revers ad esté veu en un bref d'eschete etc.

III.¹³

Ou le bref s'ambati par la reson qe la reversion fust auxi bien regardant les barouns com les femmes del dreit les femmes etc.

Nota qe deus soers ensemblement ove lour barouns porterent lour bref en le *reuerti* vers A. e conterent de la seisine H. lour auncestre descendant a eux com a deus filles e un heir, e les queux a les avantdiz filles ensemblement ove lour barouns deivent revertir.

¹ *Ins.* par bref, *R.* ² avant, *R.* ³ suppose, *P.* For com . . . prove *subs.* auxi comme il pert par vostre counte, *R.* ⁴ From *A* collated with *D* and *T*. Headnote from *D*. ⁵ *Ins.* l'auncestre, *D.* ⁶ *Om.* l'auncestre, *D.* ⁷ *Om.* et, *D.* ⁸ lour, *D.* ⁹ de, *T.* ¹⁰ ove, *T.* ¹¹ bref, *D.* ¹² de, *D*, *T* ¹³ From *Y* (fo. 96 v°).

laid the reversion as well to the husbands as to the wives, whereas the husbands have no right, as the count proves; so the court awards that you take nothing by your writ.

II.

Entry for a term which is passed, where the writ laid the reversion in common as well to the husbands as to the wives. The writ abated.

Two men and their wives brought their writ *ad terminum qui preterit* and counted of the seisin of the ancestor of the wives and of the lease made by him etc. And the writ ran, 'and which after the aforesaid term to the aforesaid A., B., C., and D. ought to revert etc.'

Huntingdon. They have counted and demanded those tenements as of the right of their wives, and then they lay the reversion as well to the husbands as to their wives, so supposing that the husbands have an equal estate with their wives. Judgment of the writ.

BEREFORD, C.J. How can the reversion be to the wives alone, whilst they have husbands? The reversion of the demesne can be to the husbands, although the reversion [of the right] is understood to be in the wives.

Huntingdon. As the descent is in the right, so is the reversion. But if they had counted and made their descent in common, the descent would have been bad. For the same reason the reversion which lies in the right having been made in common, makes the writ bad.

STANTON, J. Because the writ lays the reversion in common where they demand as of the right of the wives, as appears by their count, the court awards that they take nothing by their writ, but be well amerced etc.

The reverse has been seen in a writ of escheat.¹

III.

Where the writ abated because the reversion was made to belong as well to the husbands as to the wives when the right belonged to the wives.

Two sisters together with their husbands brought their writ in the reverter against A. and counted of the seisin of H. their ancestor with a descent to themselves as two daughters and one heir, and [the writ said that] the tenements 'ought to revert to the aforesaid daughters together with their husbands.'

¹ This refers to the case of *Wyke v. Coleshull* on p. 44; below.

Hedon. E nous jugement de cestui bref desicom il ont conté de la seisine H. descendant a eux com a ij filles e un heir e pus en la reversion dient 'e les queux a Thomas e Alice Willem e Isabel deyvent revertir' auxicom si eux e lour barons fuissent coheirs etc.

Scrop. Coment poeit femme coverte de baron aver reversion sanz sun baroun, *quasi diceret Nunquam, ergo* etc.

Hervy a Hedon. Dites autre chose qar vous estes passé le pas autrefoiz cienz par agarde. (Et dixit uerum quia in termino sancti Michaelis proximo preterito.)

Hertepol. Sire la reversion si èst auxi enterement en le droit com est la descende; mes en la descende vous ne poez nent joindre les barons ove lour femmes, *ergo* etc.

Scrope. Nostre conclusion deit sure de nos premisses, mes le comencement de nostre bref dist 'Precipe A. quod reddat T. et Alicie uxori eius W. et Isabelle uxori eius,' *ergo* en la reversion, qar il semble qi qe soit partie au rendre, il serra partie a la reversion.

Hervy. Tendez la venue *Ber.*

Alio die Hervi prist le rulle *in presencia Ber.*, e fist demander les parties, e recorda la parole, e dist qe ceo n'est forme de la chancellerie e abati le bref.

Contrarium istius potest inueniri in quoddam placito de eschaeta de termino Pasche proximo preterito.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 38, Northants.

Reynold of Leghton of Eketon and Alice his wife John the son of Henry of Buketon and Isabel his wife and Emma the sister of Alice and Isabel¹ by Robert of Brantynghthorp their attorney demand against Simon of Hegham parson of the church of Eketon² one messuage in Eketon which they claim to be the right and inheritance of Alice Isabel and Emma and into which Simon has not entry unless after the demise which Robert of Derby father of Alice Isabel and Emma whose heirs they are made to John of Montgomery (*de Monte Gomeri*) sometime parson of the church of Eketon for a term which is passed and which after that term ought to revert to Reynold Alice John Isabel and Emma etc.

¹ The same demandants suing by William of Dodyngton, their attorney, bring an action of waste against Isabel, the widow of Robert of Derby (*De Banco Rolls*, No. 154, r. 25). They also brought a writ of cosinage against Simon of Hegham for other property in Ecton (*ibidem*, r. 38d).

² Ecton is five miles N.E. of Northampton.

Hedon. We ask judgment of this writ, on the ground that they have counted of the seisin of H. with descent to them as to two daughters and one heir, and in the reversion they say 'and which to Thomas and Alice William and Isabel ought to revert' just as if they and their husbands were coheirs etc.

Scrope. How can a woman covert of a husband have a reversion without her husband? She never can, therefore etc.

STANTON, J. to *Hedon.* Say something else, for according to the award of the court you went too far here once before. (He spoke the truth, for this happened in Michaelmas term last past.)

Hertlepool. Sir, the reversion is just as entirely in the right as is the descent; but in the descent you cannot join the husbands with their wives, therefore etc.

Scrope. Our conclusion ought to follow from our premises, but the beginning of our writ says 'Command A. that he render to T. and Alice his wife and W. and Isabel his wife.' Therefore it should be the same in the reversion, for it seems clear that he who is party to the render should be party to the reversion.

STANTON, J. Wait till BEREฟอร์ด comes.

On another day STANTON, J. took the roll in the presence of BEREฟอร์ด, and had the parties called. He [recited] the cause and said that the writ was not according to the form of the chancery, and abated the writ.

The contrary may be found in a plea of escheat of Easter term last past.¹

Note from the Record (*continued*).

And Simon by Simon of Cranesle his attorney comes and says that he ought not to answer them on this writ, because he says that whereas Reynold Alice John Isabel and Emma demand against him the messuage as the right of Alice Isabel and Emma etc. the writ says 'et quod post terminum illum ad prefatos Reginaldum Aliciam Iohannem Isabellam et Emmam reuerti debet' thus supposing that the right of Alice Isabel and Emma ought to revert to Reynold and John which is inconsistent (*inconueniens*). Whereupon he asks judgment of the writ etc.

And Reynold and the others cannot deny this; therefore it is awarded that Simon go thereof without day, and that Reynold and the others take nothing by this writ, but be in mercy for their false claim etc.

¹ This statement refers to the next case.

24. WYKE *v.* COLESHULL.¹

Ou le bref fust chalengé pur ceo qe le bref dist 'que ad predictos R. et A. uxorem eius reuerti debent,' ou le baron n'oust nul droit mes com baroun la femme. Et nichilominus stetit breue, per *Bereford* ut patet.

Precipe A. quod iuste etc. reddat I. de C. et R. uxori sue M. et F. sororibus predictae R. unum messuagium et unam carucatam terre cum pertinenciis in N. que Adam de Stratton tenuit de W. patre predictarum R., M., et F. et que ad ipsos I. R. M. et F. reuerti debent tanquam eschaeta sua eo quod predictus A. transgressionem fecit pro qua exhereditatus² fuit, ut dicunt etc.

Hengham defendi etc. e dist qe a cestui bref ne deueient il estre respondu, qar lour bref voet les queux a les diz I. R. M. et F. etc. reuertir deit, en supposant le droit de la reversion estre³ auxi haut en la persone Johan qe rien n'ad mes com baroun R., *ergo* etc.

Denham. E nous demandoms jugement, si nule reversion puet estre a la femme sanz son baron, par quei s'il ne fust nommé nostre bref serroit malvois.

Bereford. Jeo gagera un toneu de vin. Alez a la chauncellerie e vous ne averez autre bref. E nous ne abateroms⁴ mie le bref, qe autre ne puet estre trové en la chancellerie.

Touth. Volez cestui bref abatre pur ceo q'il ne ont mie severé le droit entre la femme e sun baron, mes il me semble qe ceste parole en le bref 'que tenuit de patre predictarum R. M. et F.' a cest⁵ lour ad severé.

Bere. Volez autre chose dire?

Herle. Ne entendoms mie qe cestui bref soit de forme, qar chescon bref de eschete si est doné pur certeine cause etc. ou pur defaute de saunke ou pur felonie e uncore ceo covent estre executé com pendu ou utlaghé ou forjugé le realme e altres maneres plussours solom cours de lei de terre, mes nul tieu bref n'est en Registre a la comune lei ne de novel purveu. E demandoms jugement.

Clav. Vous pledez ore al accioun, par quei etc.

Bereford. Nous avoms veu autieu bref estre meintenu cienz.

¹ From Y (fo. 123 r°). ² MS. 'exheredatus.' ³ MS. 'est.' ⁴ MS. 'abeteroms.'

⁵ The words 'a cest' have probably been written in error for 'assez.'

24. WYKE *v.* COLESHULL.¹

A writ was challenged because it said 'which ought to revert to R. and A. and his wife,' whereas the husband had no right save as his wife's husband. Nevertheless the writ stood—per BEREฟอร์ด, C.J.

Command A. that justly etc. he render to J. of C. and R. his wife, M. and F. sisters of the aforesaid R. one messuage and one carucate of land with the appurtenances in N., which Adam of Stratton held of W., the father of the aforesaid R. M. and F., and which to the aforesaid J. R. M. and F. ought to revert as their escheat on the ground that the aforesaid Adam committed a trespass for which he was disinherited as they say etc.

Hengham defended and said: They ought not to be answered on this writ, for it says, 'which to the said J. R. M. and F. etc. ought to revert,' so supposing the right of the reversion to be as much in the person of John who has nothing save as the husband of R. [as in etc.] Therefore etc.

Denham. And we ask judgment if there can be any reversion to the wife without her husband, for our writ would be bad if he were not named.

BEREฟอร์ด, C.J. I will wager a cask of wine on it. Go to the chancery, and you will have no other writ. We will not abate the writ, for another cannot be found in the chancery.

Toudeby. You wish to abate this writ because they have not severed the right of the wife from that of her husband. But it seems to me that these words in the writ 'which he held of the father of the aforesaid R. M. and F.' have sufficiently severed it.

BEREฟอร์ด, C.J. Will you say anything else?

Herle. We do not think that this writ is of [the right] form, for every writ of escheat is given for some certain cause etc. either for default of blood, or for felony; and even then [the judgment] must be executed as by hanging or outlawry or forswearing the realm, and in many other ways according to the course of the law of the land. But no such writ as this is found in the *Registrum Breuium* either a common law or of recent provision. We ask judgment.

Claver. You are now pleading to the action; wherefore etc.

BEREฟอร์ด, C.J. We have seen such a writ maintained here.

¹ The name of this case is taken from the record. It was heard in Easter term of 3 Edw. II., but was overlooked in the last volume of the series.

Et nous savom bien qe jugement se fist vers Adam de Stratton sicom lour bref suppose.

Herle. Sire nous avoms alleggé ceo qe nous savom de lei pur la partie, e de ceo prioms voz discreciouns, e si la partie voudra perdre de gree, nous ne pooms mes etc.

Alio die uenerunt partes etc.

Mugg. pria pur le tenant coment il devoit departir desicom la cause de cestui bref n'est pas cause d'eschete sicom avant est dit.

Beref. N'est pas desheritance cause d'eschete? Jeo say bien qe Adam de Stratton fust esteint de tele encheson q'il fust desherité de totes les terres q'il avoit en Engleterre.

Lauf. Le counte de Nicole rescovera terres q'il tient de lui par mesme l'encheson.

Scrope, justice. I lui avoit autre encheson ovesques.

Ber. dit au clerke. Entrez lour resons e donez les jour a la quinezeine de Saint Johan etc.

Note from the Record.

De Banco Rolls, Easter, 3 Edw. II. (No. 181), r. 190d, Wilts.

William of Wyke and Christine his wife Amabel la Bret and Alice her sister by Roger of Brisseworth their attorney demand against Richard the son of Ellis of Coleshull and Agnes his wife, John of Berton and Richard his brother one messuage and one carucate of land in Stratton next Heyswyndon¹ which Adam of Stratton held of John son of Philip le Bret the father of Christine Amabel and Alice whose heirs they are and which to William Christine Amabel and Alice ought to revert as their escheat on the ground that Adam committed (*fecit*) a trespass for which he was disinherited (*exheredatus*). And whereupon William and the others by their attorney say that Adam held the tenements of John the father etc. by homage fealty and the service of half a knight's fee, of which homage fealty and service John was seised by the hands of Adam in time of peace in time of king Edw. I. taking thereof the profits to the value etc. And from John descended the right etc. to these Christine Amabel and Alice as daughters

25. CASTLE RALPH *v.* ST. MARY WINCHESTER.²

Ou la demandante par bref ne chaunga mie la nature del feffement qe passa par la chartre.

Un A. porta sun bref d'entré *ad terminum qui preterit* de xxx acres de terre vers Isabel de C. prioressse de N. e dit qe ele ne oust

¹ High Swindon.

² From Y (fo. 97 r°).

And we know well that judgment was given against Adam of Stratton, as their writ supposes.

Herle. Sir, we have alleged what we know of the law on behalf of our clients, and as to this we pray for your decision; and if they are quite willing to lose we cannot but etc.¹

On another day the parties came.

Miggeley prayed that the tenant might go, seeing that the cause of this writ was not a cause of escheat as is said above.

BEREFORD, C.J. Is not disinherittance a cause of escheat? I know well that [the right of] Adam of Stratton was extinguished, because he was disinherited of all the lands which he had in England.

Laufare. The earl of Lincoln recovered the lands which Adam held of him for the same reason.

SCROPE, J. There were other reasons besides that.

BEREFORD, C.J., said to the clerk: Enter their arguments and give them a day on the quindene of St. John.

Note from the Record (*continued*).

and heirs, and which to William Christine Amabel and Alice ought to revert as their escheat on the ground that Adam committed a trespass for which he was disinherited. And thereof he [*sic*] brings suit etc.

And Richard Agnes John and Richard by John of Crikkelade their attorney come and defend their right when etc. And they say that they ought to answer him (*sic*) on this writ, because he (*sic*) says the cause inserted in this writ is not a cause of felony according to the law and custom of the realm etc. in such writs heretofore used [*usitata*] whereby the tenements should revert (*sint reuersure*) to William and the others as an escheat. Whereupon they ask judgment of the writ etc.

A day is given them here on the quindene of Michaelmas saving to the parties their arguments on either side.

25. CASTLE RALPH v. ST. MARY WINCHESTER.²

A case in which an indenture of fine of [half a virgate] of land was produced in answer to a demand of thirty acres.

One [Joan the widow of William of Castle Ralph] brought her writ of entry *ad terminum* concerning thirty acres of land against [Agnes of Asshele abbess of St. Mary Winchester] and said that the abbess had

¹ The meaning of the last sentence is doubtful. by the record. The headnote to the French text affords no explanation of the case.

² The proper names are corrected

entré si noun pus le lees qe H. pere A. de ceo en fist a une Maude jadis prioressse etc. predecerecce ceste Isabel a terme qe passé est.

Herle defendi etc. e dit qe accioun ne poet il avoir par la reson qe H. pere A. en la court le roi devant Sir Roger de Turkesby e ses compaignons justices errantz a Wilt' conusa le droit de ses tenemenz a la dite M. jadis etc. predecerecce etc. e a sa eglise de N. e cele lui rendi etc. Et estre ceo obliga lui e ses heirs a la garantie E mist avant fin a la court, qe voleit une bové de terre.

Hengham. Bové de terre en ceo pays ne amonte qe xvj acres de terre. Quei respont il al remenant?

Herle. Les tenemenz qe vous avez mis en vostre vewe sunt compris en la fin, prest del averer.

Hengham, ut prius. Quei responez au remenant?

Bereford. Carues e bovez de terre sunt grosses e enteres. E quant il passent par feffement il passent grossement e ne mie par nombre; par quei responez a ceo qe la prioressse vous dit, qe les tenemenz qe vous avez mis en vewe sunt compris en la fin, qar par vostre dist plussours gentz en Engleterre serreint desheritez qar les unes carues e bovez de terre sunt tenuz par plus e par meinz. E quidez vous, si ilui eust plus ou meinz, qe pur ceo qe vostre demande si est nombré par acres qe, pur ceo vous averiez avantage, *quasi diceret*, noun.

Hengham. Nostre demande nent compris etc. prest etc.

Et alii contrarium.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 61, Hants.

Joan the widow of William of Ralph's Castle demands by her attorney against Agnes of Asshele abbess of St. Mary Winchester one toft thirty acres of land and twenty acres of wood in Froyle¹ as her right and inheritance and into which the abbess has no entry unless after the demise which William, sometime Joan's husband, whom she in his lifetime could not gainsay made thereof to Agnes sometime abbess of St. Mary Winchester, predecessor of the abbess etc.

And the abbess comes by her attorney and defends her right when etc. and says that Joan can claim no right therein etc.: for she says that heretofore in the court of king Hen. III. a month from Easter 47 Hen. III. before Nicholas de la Tour and his fellow justices in eyre in the county aforesaid at Winchester a fine² was levied between one Agnes then abbess of St. Mary Winton predecessor of this abbess etc. plaintiff and the said William

¹ Between Alton and Farnham. ² *Feet of Fines*, Case 204, File 10, No. 63.

not entry unless after the lease which H. the father of [Joan] made thereof to one [Agnes] lately abbess etc. the predecessoress of this [Agnes,] for a term which has passed.

Herle defended etc. and said that she could not have an action because H. the father of [Joan] in the court of the king before Sir [Nicholas de la Tour] and his fellows justices in eyre at [Winchester] acknowledged the right of these tenements to the said [Agnes] lately etc. predecessoress etc. and her church of [St. Mary Winchester], and rendered them to her etc. and further bound himself and his heirs to warranty. And she produced to the court a fine, which spoke of a bovate ¹ of land.

Hengham. A bovate of land in this country amounts to sixteen acres of land only. What do [you] answer to the remainder?

Herle. The tenements which you have put in [our] view are comprised in the fine, ready are we to aver.

Hengham as before. What do you answer to the remainder?

BEREFORD, C.J. Carucates and bovates of land are grosses and entireties. And when they pass by feoffment they pass as grosses and not by number [of acres]. Wherefore answer what the [abbess] has told you, namely, that the tenements which you have put in view are comprised in the fine. According to what you say, many a man in England would be disinherited, for some carucates and bovates of land are held for more and some for less acres. And do you really think, if there were more or less, that because your demand is made by the number of acres you would have any advantage by that? I do not.

Hengham. Our demand is not comprised in the fine etc., ready etc.

And the others to the contrary.

Note from the Record (*continued*).

of Ralph's Castle and Joan then his wife impediēt of half a virgate of land seven acres of wood in Froyle whereupon a plea of warranty of charter was summoned between them etc. that is to say, that William and Joan acknowledged the tenements with the appurtenances to be the right of the abbess and her church of St. Mary Winchester as those which the abbess and her church have of the gift etc. To have and to hold to the abbess and the other abbesses, who should succeed her in her church, of William and Joan and the heirs of Joan for ever. And William and Joan

¹ It will be noticed that the bovate the virgate in this neighbourhood of is called half a virgate in the record. Froyl contained 32 acres. If Hengham's statement can be trusted

Note from the Record (*continued*).

and the heirs of Joan would warrant to the abbess and the other abbesses etc. the tenements with the appurtenances against all men for ever etc.: and she proffered a part of the fine which witnesses this etc. And she says that the tenements demanded and which Joan put in her view etc. are the same tenements as those in the fine contained. Whereupon she asks judgment if an action can avail Joan, who was a party to the fine etc.

26. MUCHET *v.* HUNDRINGHAM.¹

Ou quitance fu fete a cely qe ne fu nent seisi del franc tenement et valuit sibi etc.

Un A. porta sun bref d'entré *dum fuit infra etatem* vers B. qe tient a terme de vie de C. e prie eide de lui. Eide lui fust granté. C. vint par somonz e se joint a B.

Laufare. La ou A. porte cesti bref vers B. e dist q'il n'ad entré si noun tanqe il fut dedeinz age, Sire, nous vous dioms qe A. granta la reversion de ceuz tenemenz a C. par queu grant B. se atturna e pus le dit A. releassa e quiteclama au dit C. tut le droit q'il oust en les ditz tenemenz, e demandoms jugement si encontre sun fet demeine puisse accion avoir.

Hedon. Ceo fet nous ne deit grever, car il fu fet tanke nous fumes de deinz age.

Laufare. De plein age, prest etc.

Et alii contrarium.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 187d, Camb.

John Muchet of Fenditton who is of full age etc. by Ralph of Dokesworth his attorney demands against John of Hundryngham one messuage one hundred and sixty acres of land three acres of meadow and twenty shillings of rent in Trippelawe which John Muchet demised to him while he was within age etc.

And John of Hundringham by John of Snyterle his attorney comes and heretofore he said that he holds the tenements for the term of his life by the demise of John Muchet which John Muchet granted and assigned the reversion of the same after the death of John of Hundringham to William Crocheman and Amy his wife, by reason of which assignment John of Hundringham attorned himself of his fealty to William and Amy. Whereupon he says that he holds the tenements for the term of his life of the inheritance of William and Amy without whom he cannot answer him

¹ From Y (fo. 98 r^o).

Note from the Record (*continued*).

And Joan says that the fine ought not to prejudice her in this behalf etc.; for she says that the tenements which she demands are not contained in the fine as the abbess says and of this she puts herself upon¹ the country.

Issue is joined and a *uenire facias* awarded here for the quindene of Trinity.

26. MUCHET *v.* HUNDRINGHAM.²

Where an acquittance was made to one who was not seised of the frank tenement, and availed him etc.

One A. brought his writ of entry *dum fuit infra etatem* against B. who held for a term of life of C., and B. prayed aid of C. Aid was granted him. C. came by summons and joined himself to B.

Laufare. Whereas A. brings this writ against B. and says that B. has not entry unless whilst he was within age, we tell you, Sir, that A. granted the reversion of these tenements to C., and upon this grant B. attorned and then the said A. released and quitclaimed to the said C. all the right which he had in the said tenements. We ask judgment, if he can have an action against his own deed.

Hedon. That fact ought not to hurt us, for the deed was made while we were within age.

Laufare. Of full age, ready etc.

And the others to the contrary.

Note from the Record (*continued*).

thereof; and he prayed aid of William and Amy, who now come by summons by Thomas of Cotenham their attorney and join themselves to John of Hundringham in answering etc. and they deny his right when etc. And they say that John Muchet can claim no right in the tenements because when they were in the seisin of John of Hundryngham in form aforesaid, John Muchet by his writing granted remised and entirely for himself and his heirs quitclaimed to William and Amy and Richard their son and their heirs and assigns etc. those thirteen silver marks of annual rent in the vill of Trippelawe which John of Hundringham owed to him for the aforesaid tenements for the term of his life to receive the thirteen silver marks of annual rent at two terms of the year by the hands of John for all those tenements which he had in the vill of Trippelawe; and of the reversion of these he enfeoffed William Amy and Richard by his charter, he remised also to William and Amy and Richard and their heirs and assigns all the right

¹ This is unusual. A demandant generally 'prays enquiry by the country,' and a tenant 'puts himself upon the country.'

² The name of the case is taken from the record.

Note from the Record (*continued*).

and claim which he had or in any way could have in the tenements and in all other lands and tenements in the town and field of Trippelawe of the reversion of which he enfeofed William and Amy and Richard by his charter so that neither John Muchet nor his heirs etc. could ever in future demand or exact any right or claim in the tenements or rent from William Amy and Richard by reason of the fee demesne or reversion but he entirely excluded himself and his heirs etc. for ever from all exactions and demands against William Amy and Richard and their heirs and assigns made concerning the reversion and rent by reason of the fee or by reason of any other right availing them or in future to avail them. And they proffer this writing under the name of John Muchet which witnesses this, of which the date

27. HOIUILL *v.* LE SUIR.¹

Nota ou bref fust porté vers plussours. En l'entré en la reversion e en le sumonz si est fete omission² de un des tenans.

Scrop. Quant a tiel *precipe* nous prioms congé etc.

Willuby. Cestui bref peche en forme e demandoms jugement etc.

Hervy. Si les examinours eussont trové cele defaute, eussent il mis le bref au seal ?

Scrope. Sire, Nanil.

Hervy. E pur quoi le devons nous maintenir ?

Hervy. Si agarde la cort qe ne preignez rien par vostre bref etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 59d, Northants.

William the son of Adam of Hoiuill of Carleton by William of Cherleby his attorney demands against Hugh le Suir of Carleton and Alice his wife one messuage and four acres of land in Carleton next Rokingham, and against . . . , and against Richard Rykeman and Felice his wife three acres of land and a moiety of one acre of meadow in the same vill as her right and inheritance and into which the same Hugh Alice . . . and Richard have not entry unless after the demise which Walter the son of Ralph of Carleton the uncle of William the son of Adam whose heir he is while he was of unsound mind made thereof to Peter of Middelton etc. And whereupon he complains that Hugh Alice . . . and Richard deforce him etc.

¹ From Y (fo. 97 v°).

² The record shows that the writ was defective in three places by reason of the omission of the wife of one of the tenants.

Note from the Record (*continued*).

is at Cambridge the Thursday next before the feast of St. Andrew the [26 November 1304] Apostle 32 Edw. I. Whereupon he asks judgment etc.

And John Muchet cannot deny that the writing is his deed, but he says that by virtue of the writing he ought not to be precluded from an action in this behalf, because he says that at the time of the making of the same writing he was within age, and this he is ready to aver, whereupon he asks judgment etc.

And John of Hundringham William and Amy say that John Muchet at the time of the making of the writing was of full age and not within age, as John Muchet says. And of him they put themselves upon the country.

Issue is joined and a *venire facias* awarded for the quindene of Trinity.

27. HOIULL *v.* LE SUIR.¹

A writ was brought against several, and in the entry, the reversion and the summons an omission was made of one of the tenants.

Scrope. As to that *precipe* we ask leave etc.

Willoughby. This writ errs in form, and we ask judgment etc.

STANTON, J. If the examiners had found this defect, would they have passed the writ for the seal?

Scrope. No, sir.

STANTON, J. And why should we uphold it?

STANTON, J. The court awards that you take nothing by your writ etc.²

Note from the Record (*continued*).

And Hugh and the others by John of Whiwby their attorney come, and they say that they ought not to answer him thereof on this writ on the ground that the writ errs in form in three places, for they say that first it is contained in the writ that he demands against Richard Rykeman and Felice his wife three acres etc. and in three subsequent clauses in the writ, to wit, 'And into which Hugh and the others have not entry,' and also in this clause, 'And whereof he complains that Hugh and the others deforce him,' and also in the third clause, 'And unless they shall do it etc., then summon Hugh and the others,' the name of Felice in each of those clauses is wanting as appears by an inspection of the writ, whereupon Hugh and the others singly ask judgment of the form of the writ etc.

And William the son of Adam cannot deny this, and forthwith he asks leave to withdraw from his writ and he has it etc.

¹ The name of the case is taken from of the Court. See the note from the the record.

² This, however, was not the award

28. GASCELYN v. RYUERE.

I.¹

Cui in uita ou le bref fust chalengé, et pus le tenant voleit aver traversé le droit.

Rogier Gacelyn et Agnes sa femme porterent le *cui in uita* vers Jon de Ryvers, et fuist le bref tiel 'quod clamant tenere sibi et heredibus suis de corporibus predictorum A. et W. quondam uiri sui exeuntibus ex dimissione Ricardi de T. etc.' Et counta 'qe atort etc. et pour ceo atort qe c'est soun droit du doun un tiel a lui et a ses heirs de lour corps issauntz et dount ele mesmes fuist seisi.'

Herle. Ele ad countée qe c'est soun droit, et soun bref ne fet mye mencioun de ceo droit. Jugement de ceo counte.

Malm. Nous dyoms qe c'est soun droit et avoms moustré coment solome la fourme du doun. Jugement.

Herle. Vous n'avietz mye pursiwy vostre bref, et de ceo demaundoms jugement.

Malm. Ceo serroit bon bref, 'quod clamat tenere ad uitam suam' et unqore serroit ceo bon counte 'pur ceo qe c'est soun droit et soun fraunc tenement.'

Herle. Si vous fuissetz seisi² et portastes vostre³ bref d'entré sour⁴ la novele disseisine vous ne frez mye tite, nyent plus pas de cea etc.

Ber. Le counte est bon, respoundez outre.

Herle. Dounqe jugement du bref, qe le bref serroit 'que clamat ut ius suum de dono talis sibi et W. quondam uiro suo et heredibus etc. que predictam A. et W. quondam uirum suum inde feoffauit,' qe si l'autre est bon dounqe est le counte malveis; et si le counte est bon, le bref est malveis.

Malm. Nous n'averoms autre bref en la chauncellerie.

Ber. Nous avoms veu tiel bref mayntenu ceins avaunt ces houres, par quei nous agardoms le bref bon.

Herle. Au bref et au counte covent respoundre, et vous dyoms q'ele n'avoit unqes droit, prest etc.

Berr. Ceo ne serroit mye issue en cestui bref, qe jeo vey⁵ en bref d'entré qe le tenaunt tendist tiele issue, ou fuist dit qe l'auncestre de

¹ From *B* collated with *G*.

² For fuissetz seisi, *subs.* usset dist, *G*.

³ portasset, *G*.

⁴ su, *G*.

⁵ vi, *G*.

28. GASCELYN *v.* RYUERE.I.¹

A writ of *cui in uita* was challenged and afterwards the tenant wished to traverse the demandant's right.

[Bogo] Gacelyn and [Amice] his wife brought the *cui in uita* against John de Ryvers, and the writ ran thus, 'which they claim to hold to her and the heirs of the bodies of the aforesaid [Amice] and William sometime her husband issuing by the demise of Richard [the son of Richard of] T.' And [they] counted 'that wrongly etc., and for this wrongly because this is her right of the gift of such a one to her and [the] heirs of their bodies issuing, and whereof she herself was seised.

Herle. She has counted that this is her right and her writ does not mention this right. Judgment of this count.

Malberthorpe. We say that this is her right and we have shown how it is her right according to the form of the gift. Judgment.

Herle. You have not followed your writ, and of that we ask judgment.

Malberthorpe. This would be a good writ 'which she claims to hold for her life,' and this would be a good count, 'for this is her right and her frank tenement.'

Herle. If you had been seised and had brought your writ of entry founded on the novel disseisin, you would not make a title, no more should you in this case.

BEREFORD, C.J. The count is good. Answer further.

Herle. Then we ask judgment of the writ, for it should be thus, 'which she claims as her right of the gift of such a one to her and William sometime her husband and the heirs etc. who enfeoffed thereof the aforesaid Amice and William sometime her husband. For if the writ is good the count is bad; and if the count is good, the writ is bad.

Malberthorpe. We could have no other writ than ours in the chancery.

BEREFORD, C.J. We have seen such a writ as this upheld here before now, so we award the writ good.

Herle. We have to answer both writ and count and we tell you that she never had any right etc. Ready etc.

BEREFORD, C.J. That would not be an issue in this writ, for I have seen in a writ of entry that the tenant offered such an issue, and was

¹ This appears in the Old Edition on p. 96.

qi le demaundaunt prist soun tittle fuist seisi en soun demene etc. come de fee; et cesti bref ne prist mye naturelment issue en le droit, par quei etc.

Herle demaunda veuwe; et habuit.

Et habuit diem termino Trinitatis; et ibi placitum ut patet in fine termini.¹

II.²

En un *cui in uita* la femme se fit tittle 'quod clamat tenere sibi et heredibus suis de corpore suo exeuntibus ex dimissione A.,' e counta en soun counte 'qe c'est soun dreit.'

Herle chalengea le counte, pur ceo q'il soi fit autre tittle en soun counte qe soun bref ne voloit, qe bref ne dit pas 'quod clamat esse ius etc.' E dit qe la ou le bref veut tittle qe home deit counter le tittle en countaunt saunz rien amenuser ou avoyter.

West. En un bref 'quod clamat tenere ad terminum uite sue' home countera qe 'c'est soun fraunc tenement, *sic hic.*' Sire en un bref de entré foundu sur la novele disseisine home countera de seisine demesne 'qe c'est soun dreit' e si n'avera il mie 'quod clamat esse ius etc.' en soun bref.

E pur ceo qe ele avoit dreit en la taillé le counte fut agardé bon.

E pus challengerent le bref de ceo q'il fit tittle en³ paroles qe ne sount pas usueles, e dit q'il dust avoir dit 'quod clamat esse ius suum de dono talis.'

West. Vous n'avez jammes tittle tele s'il ne soit 'quod clamat esse ius et maritagium suum' uel 'ius et hereditatem suam,' uel 'ius suum de dono talis qui inde eam feoffaut'; e nous ne sumes en nul de ceux cas.

Ber. Vous avez veu 'quod clamat esse ius,' la ou tenemenz sount perduz par defaute. E tot soit⁴ il forme meillour ditz outre etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 61, Gloucester.

Bogo Gascelyn and Amice his wife by their attorney demand against John de la Ryuere of Tormerton one messuage one hundred and eighty seven acres of land eighteen and a half acres of meadow and eight acres of wood and one hundred and five shillings and six pence of rent in Acton Turuill⁵ which they claim to hold to Amice and the heirs of the bodies of Amice and William de l'Arche (*de Arcubus*) sometime her husband issuing

¹ This last paragraph is omitted in *G.* ² From *P* collated with *M.* ³ ove, *M.* ⁴ eit, *M.* ⁵ Acton Turvill and Tormarton are adjoining parishes on the southern border of Gloucester. In Trinity term 3 Edw. II. the same demandants brought an action to recover the same property, but for some cause not stated on the roll they were non-suited (*De Banco Rolls*, No. 182, r. 38d).

told that the ancestor from whom the demandant took his title was seised in his demesne etc. as of fee. And this writ does not naturally lead to an issue in the right, wherefore etc.

Herle asked for a view, and he had it.

He had a day in Trinity term, and there is the plea as appears at the end of the term.

II.

In a writ of *cui in uita* the woman made her title thus 'which she claims to hold to her and the heirs of her body issuing by the demise of A.'; and in her count she said 'this is her right.'

Herle challenged the count, because she made another title for herself in her count than her writ stated, as the writ did not say 'which she claims to be her right.' And he said that where the writ states a title, that title ought to be counted without diminution or avoidance.

Westcote. In a writ *quod clamat tenere ad terminum uite sue*, the demandant will count, 'that this is his frank tenement, and similarly in this case.' Sir, in a writ of entry founded on the novel disseisin, the demandant will count of his own seisin, 'that this is his right,' and yet he will not have 'which he claims to be his right' in his writ.

And because she had right in the tail, the count was awarded good.

And then they challenged the writ because it made a title in words which were not usual; and they said that the demandants should have said, 'which she claims to be her right of the gift of such a one.'

Westcote. You will never have such a title, if it be not 'which she claims to be her right and marriage' or 'her right and inheritance' or 'her right of the gift of such a one who enfeoffed her thereof'; and we are in none of these cases.

BEREFORD, C.J. You have seen 'which he claims to be his right,' in a case where the tenements were lost by default. And though there be a better form, you must answer further.

Note from the Record (*continued*).

by the demise which Richard the son of Richard de Turberuill' made thereof to William and Amice and into which John has not entry unless by Richard the son of Richard de Turberuill to whom William sometime the husband of Amice demised them, whom she in his lifetime could not gainsay etc.¹

And John by his attorney comes, and asks for view thereof: Let him have it. A day is given to them here on the quindene of the Holy Trinity. And in the meantime etc.

¹ The word 'cras' is here written in the margin of the roll.



29. BAXMAN *v.* HAVERING.I.¹

Ou le assignement le fiz ne changea mie les degreez etc.

Un A. porta sun *cui in uita* vers P. e conta de la seisine A. sa mere e dist 'en le quel il ne oust entré si noun pus le lees qe W. de Grafton jadis baroun cele Alice fist a G. Neville etc.'

Herle. Sire nous aviom l'entré par G. de Nevylle. E poet avoir sun bref en les degreez. Jugement si hors de degreez puisse bref user etc.

Hedon. Nous dioms qe G. devia seisi de ceux tenemenz apres q'i mort entra J. com fiz e heir, par quei nous entrames ceux tenemenz, e issi sumes en le quarte degree, prest etc.

Hervy. Il vous dist ke vous entrastes par G. responez la.

Hedon. Nent par G., prest etc.

Et alii contrarium.

II.²

En un bref d'entré en le *post*, en le quel Johan³ de Senile n'ad entré si noun pus le lees qe le demaundaunt de ceo en fit a G. de⁴ Neville⁵ a terme qe passé est.

Herle. Cesti bref en le *post* ne gist mye si noun oue le *per* n'est pas maintainable, mes Johan⁶ entra par G.; par quei etc. Jugement.

Hedon. Il entra⁷ mye par G., prest etc.

Herle. Par quei donqe?

Hedon. Assez nous suffit de⁸ dire, 'nent par ly.'

Herle. Si vous ne⁹ voillez dire, nent par ly, G.,¹⁰ il vous covent doner ascone seisine entre G. e J.

¹ From Y (fo. 98 r°).

² From M, collated with P.

³ Willam, P.

⁴ Om. de, P.

⁵ Senile, P.

⁶ W. P.

⁷ n'entra, P.

⁸ a, P.

⁹ Om. ne, P.

¹⁰ Om. G., P.

29. BAXMAN *v.* HAVERING.

I.

A case in which the assignment of the son did not change the degrees etc.

One [William] brought his *cui in uita* against [Joan of Havering] and counted of the seisin of [Joan] his mother and said 'into which [Joan of Havering] had not entry unless after the lease which [Richard Baxman¹] lately husband of this [Joan his mother] made to Geoffrey de Neville etc.'

Herle. Sir, we had entry by Geoffrey de Neville and the demandant can have his writ within the degrees. Judgment, if he can use this writ outside the degrees etc.

Hedon. We say that Geoffrey died seised of these tenements and that after his death John entered as son² and heir, by whom [you] entered; and so [you] are in the fourth degree etc. ready etc.

STANTON, J. He tells you that you entered by Geoffrey. Answer that.

Hedon. Not by Geoffrey, ready etc.

And the others to the contrary.

II.

In a writ of entry in the *post* into which [Joan of Havering] had not entry unless after the lease which the demandant² made thereof to Geoffrey de Neville for a term which is passed.

Herle. This writ in the *post* does not lie except where the *per* is not maintainable; but [Joan of Havering] entered by Geoffrey, wherefore etc. Judgment.

Hedon. [She] did not enter by Geoffrey. Ready etc.

Herle. By whom, then?

Hedon. It is sufficient for us to say, 'not by Geoffrey.'

Herle. If you wish to say, 'not by Geoffrey,' you must give some seisin between Geoffrey and [Joan of Havering].

¹ The reporter has substituted for this name, which is taken from the record, that of the demandant's attorney, William of Grafton.

² According to the record he was the cousin and not the son of Geoffrey.

³ The report is not accurate here. See the note from the record.

E fut chacé a dire ' par quei.' Il dit qe G. devia seisi apres qi mort J. entra e dona a cesti Johan ¹ prest etc.

Et alii econtra.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 187d, Wilts.

William the son of Richard Baxman senior by William of Grafton his attorney demands against Joan the widow of John of Haueringges two acres of marsh in Estgraston as his right and inheritance and into which Joan has not entry unless after the demise which Richard Baxman sometime the husband of Joan the daughter of Warin Doygnel the mother of William whose heir he is, whom she in his life time could not gainsay, made to Geoffrey de Neville etc.²

And Joan by John Perhay her attorney comes and says that she ought not to answer him on this writ of entry in the *post* etc. because she says that William, if he have any right in the tenements, could have had a competent writ conceived in the degrees etc.; for she says that whereas William by his writ supposes that Joan had entry in the tenements after the demise which Richard Baxman, sometime the husband etc. made thereof

30. TONY v. CONDUIT (1).

I.³

Un bref fut porté vers deux joyntenauntz. L'un fit defaute⁴ par quey le graunt Cape issit. Au jour etc. il fit autrefeze defaute.⁵

Scrop pria seisine⁶ de la meité.

Hedon. Nous sumes tenauntz de l'entier et fumes le jour du bref purchacé et prest sumes a respondre de l'entier.

Scrop. Nous voloms averer q'il tent joint⁷ ove vous.

Berr. Ne⁸ volet mye⁹ counter vers ly?

Scrop. En dreit de la meité nous voloms counter. En dreit du remenaunt, nous prioms seisine du terre.

Berr. N'est il prest en court a respondre de l'entier etc.,¹⁰ tenaunt de l'entier, qe¹¹ vous le¹² supposet mesme¹³ par vostre bref, qe¹⁴ voux portez vostre bref vers eux com vers joyntenauntz. Et *si sic*, *ergo* chescun tenaunt de l'entier. Et pur ceo countez vers ly etc.

¹ W., P. ² The word 'cras' is here written in the margin of the roll. ³ From R, collated with C, M, P, Q. ⁴ *Ins.* apres defaute, C, P, Q.

⁵ *Om.* par quei . . . defaute, C, P, Q. ⁶ *Ins.* de terre, C, M, P, Q.

⁷ jointement, M. For tent joint, *subs.* fut joint tenaunt, C, P, Q. ⁸ *Om.* ne,

C, P, Q. ⁹ *Om.* mye, C, P, Q. ¹⁰ *Subs.* e, C, P; e est, M. ¹¹ com, C, P, Q.

¹² *Om.* le, C, M, P, Q. ¹³ *Om.* mesme, C, P, Q. ¹⁴ ne, M.

And *Hedon* was driven to say 'by whom.' He said that Geoffrey died seised, and after his death John entered and gave the tenements to this Joan [of Havering]. Ready etc.

And the others to the contrary.

Note from the Record (*continued*).

to Geoffrey de Neville etc., the same Joan had entry in the tenements by Geoffrey de Neville etc. And this she is ready to aver etc. whereupon she asks judgment of the writ etc.

And William says that Joan has not entry in the tenements by Geoffrey, for he says that Geoffrey died seised of the tenements in his demesne as of fee; after whose death one John de Neville entered into the tenements as cousin and heir of Geoffrey; and this John demised the tenements to Joan. Whereupon he says that Joan had entry in the tenements by John de Neville and not by Geoffrey as Joan says. And he asks that this be enquired by the country.

Issue is joined and a *uenire facias* awarded here for the octave of St. John the Baptist.

30. TONY *v.* CONDUIT (1).¹

I.

A writ was brought against two joint tenants. One of them made default, whereupon the grand Cape issued. On the day of its return he made default a second time.

Scrope prayed seisin of a moiety.

Hedon. We are tenants of the entirety and were so on the day when the writ was purchased. We are ready to answer for the entirety.

Scrope. We wish to aver that the defaulting tenant holds jointly with you.

BEREFORD, C.J. Will you not count against him?

Scrope. As to one moiety we are willing to count; as to the other remainder, we pray seisin of the land.

BEREFORD, C.J. Is he not ready to answer in court for the entirety, and is he not tenant of the entirety, as you by your writ suppose, for you bring your writ against them as joint tenants? And if they are, each one of them is tenant of the entirety. Therefore count against him etc.

¹ The name of the case is taken from the record, of which a note will be found on p. 55 below.

Scrop. Si nous pledoms ove ¹ ly nous ne pouns recoverer forge la meité.

Berr. Pledet ov ly taunqe vous eiet recoveré, et si ² ne vous face aver l'entier, ³ jeo vous dorrai taunt de ma terre.

(Et il counta vers ly etc.)

Hedon. Nous demaundoms la vewe. (Et non habuit quia cognovit q'il fut tenaunt de l'entier. Et la vewe ne sert d'autre rien si noun de ascerter le tenaunt, et il est asset asserté par taunt etc.) ⁴

II. ⁵

Ou la defaute le un joint tenant ne dona mie avantage al demandant del heure qe l'autre prest fut a respondre del entier.

Nota qe un bref d'entré fust porté vers Johan de Cheston e un Willem de C. Willem fist defaute apres defaute.

Hengham. La ou cestui bref est porté vers Johan e Willem com vers jointz tenaunz, Johan vous dit qe W. ne oust rien en les tenemenz le jour du bref purchacé, ne hui ceo jour n'ad, einz est Johan tenant etc. e fust etc. e prest est a respondre etc.

Hedon. Sire vous veez bien coment nous avoms porté nostre bref vers les deus, *scil.* Johan e W. com vers jointz tenantz; dont W. fet defaute apres defaute quant a la moitié. Et voloms averer qe W. fust joint tenant ove J. le jour de nostre bref purchacé e prioms seisine de terre quant a la moitié.

Bereford. Johan vous dit qe il est tenant del entier, volez vous suyre vers Johan ou noun?

Hedon. Si nous recoverissons vers Johan l'entier, W. avereit l'assise vers nous de la moitié, e rescovereit etc.

Ber. S'il rescovere vers vous cele moitié par cele voye, jeo vous durra tant de ma terre.

Et postea *Hedon* conta vers Johan com vers tenant del entier etc.

¹ vers, *M.* ² *Ins.* jeo, *C, M, P.* ³ tut, *C, P, Q.* ⁴ *For* Et la . . . taunt etc., *subs.* et par tant ascerté de la demaunde, *C, P, Q.* ⁵ From *Y* (fo. 96 v^o).

Scrope. If we plead with him, we can recover only the moiety.

BEREFORD, C.J. Plead with him until you have recovered, and if I do not cause you to have the entirety, I will give you as much of my own land.

The demandant counted against him etc.

Hedon. We ask for a view. (He had it not, because he had acknowledged that he was tenant of the entirety; and view serves for nothing but to make the tenant certain of the demand, and he is sufficiently certain, inasmuch etc.)

II.

A case in which the default of one joint tenant gave no advantage to the demandant, since the other tenant was ready to answer for the entirety.

A writ of entry was brought against John of Cheston¹ and one William of C. William made default after default.

Hengham. Whereas this writ is brought against John and William, as joint tenants, John tells you that William had nothing in the tenements on the day when the writ was purchased, nor has he this very day, but that John is the tenant etc. and was the tenant etc. and is ready to answer etc.

Hedon. Sir, you see how we have brought our writ against the two, that is to say, John and William, as against joint tenants, and thereupon William makes default after default as regards the moiety. We wish to aver that William was joint tenant with John on the day when the writ was purchased, and we pray seisin of the land as regards a moiety thereof.

BEREFORD, C.J. John tells you that he is tenant of the entirety. Will you sue against John or not?

Hedon. If we were to recover the entirety against John, William would have the assize against us for the moiety thereof, and would recover etc.

BEREFORD, C.J. If he recover that moiety against you in this way, I will give you as much of my own land.²

And afterwards *Hedon* counted against John as tenant of the entirety.

¹ In the translation the proper names have not been corrected by the record, as the identification is possibly incorrect.

² The remark of the Chief Justice is to a different effect in the first report.

Et pur ceo qe jeo dotay qe nul proces fust fet vers W. jeo alay a *Rydenal* e il me moustra le roulle qe dit: A. que fuit uxor C. optulit se quarto die versus W. de placito quod reddat sibi medietatem unius carucate terre cum pertinenciis in Cheston. Et ipse non uenit et alias fecit defaltam, scilicet, tali die, unde preceptum fuit uicecomiti quod caperet illam medietatem in manum domini regis et quod summoniret eum quod esset hic ad hunc diem. Et modo non uenit set facit defaltam post defaltam. Et super hoc uenit Iohannes de Cheston et dicit quod ipse W. nichil habuit in predictis tenementis die impetracionis breuis nec adhuc habet; set dicit quod ipse est tenens de integro et fuit die impetracionis breuis et paratus est respondere, petit,¹ et admittatur. Et fuit ut patet in placito.

31. TONY *v.* CONDUIT (2).²

Alice qe fu la femme H. porta le *cui in vita* vers R. de Touny e demanda un mies en N. le quel un C. dona au ditz H. e A. e les heirs de lour corps engendreez.

Grantebrigg. Alice ne puet accion avoir, qar ele ne oust rien en les tenemenz mes com femme H. et prest etc:

Hedon. Donqe dites vous qe C. ne dona mie les tenemenz?

Grantebrigg. A ceo ne ay jeo mester a respondre qar jeo suy a travers de vostre accion.

Hedon. Vous dites talent, qar nous clamoms com nostre dreit du lees C. e demandom jugement si a tieu travers serrez receu, qe n'est pas plein en lui meismes.

Hervi. Ele cleime teu mees com sun dreit solom la taille du doun C. Pur quei ne devez auxibien traverser le un point com l'autre?

¹ An 'etc.' has probably been omitted.

² From Y (fo. 96 v°).

And because I doubted whether any process was made against William, I went to *Ridenal* and he showed me the roll, which said : ' A. the widow of C. offered herself the fourth day against W. on a plea that he render to her a moiety of a carucate of land with the appurtenances in Cheston, and he did not come and he made default heretofore, to wit, on such and such a day, whereupon the sheriff was ordered to take that moiety into the king's hand and to summon William to be here at this day. And now he does not come but makes default after default. And upon this comes John of Cheston and says that William had nothing in the aforesaid tenements on the day when the writ was purchased, nor has he as yet; but he says that he himself is tenant of the entirety and was so on the day when the writ was purchased, and is ready to answer. He asks that he may be received, and he was received as appears in the plea.

31. TONY *v.* CONDUIT (2).¹

[Joan] who was the wife of [Walter Tony] brought the *cui in uita* against [John of Cheshunt] and demanded a messuage in N., which one [Roger] gave to the said [Walter³ and Joan] and the heirs of their bodies begotten.⁴

Cambridge. [Joan] cannot have an action, for she had nothing in the tenements except as the wife of [Walter], and ready are we to aver it.

Hedon. Then do you say that Roger did not give the tenements?

Cambridge. To that I have no need to answer, for I am traversing your action.

Hedon. You are wrong, for we claim it as our right by the demise of [Roger], and we ask judgment if to such a traverse you should be received, for it is not complete.

STANTON, J. She claims that messuage as her right according to the limitation of the gift by [Roger]. Why should you not traverse both points?

¹ The process here stated is not in agreement with the facts stated in the record of the issue joined in *Tony v. Conduit*; but the reporter may have amplified a brief note from the record of the mesne process. The record of the mesne process in *Tony v. Conduit* has unfortunately not been found.

² This seems to be the same case as

the last, but reported on the principal plea. The proper names are corrected by the record, of which a note is printed at the end of the last case.

³ The action, if correctly identified, was originally brought against two tenants. See the note from the record.

⁴ The words of limitation are not given in the record.

Sire, si vous agardez etc.

Hervy. Il covent qe vous diez plus, si vous volez estre a travers. Et postea *Grantebregge* dit q'ele ne out rien du doun C. prest etc. Et alii contrarium.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 38, Middlesex.

Joan the widow of Walter Tony by Thomas of Stanes his attorney offered herself the fourth day against Geoffrey atte Conduyt on a plea of eight acres of land in Stanes which she claims as her right against him and John of Cheshunt etc. And Geoffrey came not; and as well he as John heretofore, to wit, on the quindene of Easter last past, made default, after they were summoned etc. so that the sheriff was then ordered to take the land into the king's hand etc. and the day etc. and to summon them to be here on the octave of St. Michael next following etc. And at that day the sheriff did nothing thereof, nor did he send his writ, so that the sheriff was then ordered as before to take the land into the king's hand etc. and the day etc., and to summon him to be here on this day etc. And the sheriff now witnesses the day of the taking, and that he summoned etc. And upon this comes John and says that he holds the land entirely and that Geoffrey has nothing in the same, and he asks that the default of Geoffrey be not

32. GUREWARD v. LE FEURE.

I.¹

Entré sur la disseisine ou le tenaunt mit avant la chartre celi de qi seisine le demaundaunt prent sa accioun.

Un A. porta bref de entré en lez queux le tenant n'ad entré si noun par Willem le Wyt e Dyonise sa femme qe atort etc. disseiserent Nicol.

Denom. Mesme ceti N. fut seisi de ceux tenemenz e enfeffa W. le Wyt etc. e obliga li e cez heirs a garantie a eux e a lour heirs e lour assignez. E nous sumes assignez Willem. Jugement si vous pussez accioun avoir.

Will. Nous voloms averrer qe W. e Dyonise disseiserent nous etc. Jugement etc.

Denom. Est ceo vostre fet ou noun?

Will. Vous ditz qe Nichol dona lez tenemenz a W. etc. e issi sumes a travers; qe nous voloms averrer qe Willam e Dyonise disseiserent Nichole; e issint est vostre response a travers de nostre

¹ From *P.*

Sir, we will do so, if you award it.

STANTON, J. You must say something more, if you wish to traverse her action.

Afterwards *Cambridge* said that she had nothing of the gift of [Roger], and ready was he etc.

The others to the contrary.

Note from the Record (*continued*).

prejudicial to him etc. but that he be received for the defence of that land, and he is received. And Joan demands the land against him as her right as of the gift of Roger le Mareschal, who enfeoffed Joan and Walter formerly her husband thereof, and into which John and Geoffrey have not entry unless after the demise which Walter formerly the husband of Joan, whom she in his lifetime could not gainsay, made thereof to Walter le Engleys.

And John comes and denies her right when etc. And well he denies that Joan ever held anything in the aforesaid land of the gift of Roger le Mareschal, as Joan by her writ supposes. And of this he puts himself upon the country.

Issue is joined and a *venire facias* awarded here for the octave of Trinity.

32. GUREWARD *v.* LE FEVRE.

I.

Entry sur disseisin. The tenant produced the charter granted by him, on whose seisin the demandant based his action.

One [Nicholas] brought a writ of entry 'into which the tenant had not entry unless by William le White and Denise his wife, who wrongly etc. disseised Nicholas.'

Denham. This same Nicholas was seised of these tenements, and enfeoffed William le White etc. and bound himself and his heirs to warrant to them and their heirs and their assigns; and we are the assigns of William. Judgment if you can have an action.

Willoughby. We wish to aver that William and Denise disseised us etc. Judgment etc.

Denham. Is this your deed or not?

Willoughby. You say that Nicholas gave the tenements to William etc. and so we are traversed; for we wish to aver that William and Denise disseised Nicholas, and so your answer traverses our action.

acciouun. E d'autrepart de meillour condicioun ne devez estre en ceti bref d'entré fondu sur la novele disseisine qe vous ne serrez en assise de novele disseisine. Mes en assise de novel disseisine vous ne barrez pas nous par tiel response, nent plus en ceti bref de entré.

Denom. Nous mettoms avaunt vostre fet par quel fet vous estes lié a la garantie. E si nous fussions enpledé de un estraunge vous nous garantissez cum assigné W. Jugement etc.

Will. Nous pledoms a ceo qe vous biez ly barrer par la garantie, par quei seiez avisé ou vous volez vous tenir.

Denom. Nous dioms qe en la seisine Willam, si ly fit il ceste chartre e obliga etc. Jugement etc.

Will. Cest autre response, par quei nous enparleroms.

Will. Vous avez doné un response a l'acciouun sur quel nous issymes d'enparler, par quei a ore a doner un autre response vous ne serrez pas resceu.

Ber. Il vous dit qe en la seisin Willam qi assigné il est, N. graunta e conferma mesmes lez tenemenz e obliga etc. Respondez a ceo.

Will. Si vous agardez, nous respondroms assez.

Ber. Respondez, si vous volez.

Will. Lez tenemenz qe sount en demaunde ne sount mye comprys en la chartre, prest etc.

Et alii e contra.

II.¹

Ou clause de garantie contrevalut quiteclamance etc.

Un A. porta sun bref d'entré vers B. e dist qe B. ne oust entré si noun par Johan e Alice qe de ceo atort e sanz jugement disseisirent le dit A. de un mees e xij acres de terre.

Denham defendi etc. e dist q'il ne tient qe un mies e ix acres de terre, qar ceo qe vous appelez xij acres de terre il ne sunt qe ix acres de terre.

Willuby. Qi est tenant du remenant, del houre qe vous allegez nountenue?

Hervi. Il vous ne allege mie noun tenue, einz dist qe ceo qe vous appelez xij acres etc. il ne sunt qe ix etc.; e ceo n'est pas nountenue.

¹ From Y (fo. 98 r°).

And besides you ought not to be in a better condition in this writ of entry founded on the novel disseisin, than you would be in an assize of novel disseisin. But in an assize of novel disseisin you would not bar us by such an answer, and no more should you do so in this writ of entry.

Denham. We put forward your own deed and by it you are bound to warranty. And if we were impleaded by a stranger, you would warrant to us, as the assign of William. Judgment etc.

Willoughby. We plead on this point that you wish to bar the demandant by the warranty, wherefore be advised, on what you take your stand.

Denham. We say that when the tenements were in the seisin of William, the demandant made this charter to him, and bound himself etc. Judgment etc.

Willoughby. That is another answer, wherefore we will imparl.

Willoughby. You have given an answer to the action, and upon that we went out to imparl; wherefore you will not now be received to give another answer.

BEREFORD, C.J. He tells you that in the seisin of William, whose assign he is, Nicholas granted and confirmed the same tenements and bound himself etc. Answer that.

Willoughby. If you award it, we will answer sufficiently.

BEREFORD, C.J. Answer then, if you can.

Willoughby. The tenements, which are in demand, are not comprised in the charter. Ready etc.

And the others to the contrary.

II.

A case in which a clause of warranty was held to be equivalent to a quitclaim.

One [Nicholas] brought his writ of entry against [Thomas] and said that [Thomas] had not entry unless by [William] and [Denise], who wrongly and without judgment disseised the said [Nicholas] of a messuage and twelve acres of land.

Denham defended etc. and said that he only held one messuage and nine acres of land. What you call twelve acres of land are only nine acres of land.

Willoughby. Since you allege non-tenure, state who is tenant of the remainder.

STANTON, J. He does not allege non-tenure, but says that what you call twelve acres etc. are only nine etc. That is not non-tenure.

Hedon. Quant a la sime partie del mees e de ix acres etc. nous dioms qe nous ne entrames mie par Johan e Alice einz par H. Et quant a la quinte partie nous entrames par C. e ne mie par J. e A. Et quant a la terce partie du mees e de la terre nous dioms qe mesme cestui A. dona mesme ceux tenemenz a Johan e Alice e lour heirs etc. par ceste chartre qe cy est, e obligea lui e ses heirs a garant a eux e lour heirs e lour assignes, le quel Johan e A. hors de lour seisine dona mesme les tenemenz a cestui B. par ceste chartre. E mist la chartre a la court; e si nous fuissoms enpledez par autre qe par vous, vous serriez lié a la garantie com al assigné Johan e A. E demandoms jugement si accioun poussez avoir encontre vostre fet demene.

Willuby. Quei qe vous parlez de garantie nous voloms meintenir nostre bref e dioms qe J. e A. nous disseisit.

Ber. Si Johan e Alice vous eussont disseisi e pus vous eussez fet ceste chartre en lour seisine e obligé vous e voz heirs a la garantie, jeo quide qe cele clause vous serroit barre a touz jours, qar par la chartre fete en lour seisine, le tort est purgé.

Denham. Est ceo vostre fet ou ne mie?

Willuby. Nous n'avom mie mestier a conustre ne dedire, qar nous voloms averer lez pointz de nostre bref.

Hervi a Denham. En quele forme usez vous ceste excepcioun?

Denham. Sire, com barre.

Hervy. Usez le donqe com barre.

Denham. En la seisine J. e A. q'i assigné nous sumes fist il cele chartre e obliga lui e ses heirs a la garantie etc. e si nous fuissoms etc.

Hervy. Vous liez vostre excepcion meuz ore qe avaunt.

Hervy. Quei responez vous a remenant?

Denham. Unqes seisi, par quei etc.

Willuby. Nous enparleroms.

Et postea dist qe les tenemenz qe sunt en demande ne sunt pas contenuz en la chartre, prest etc.

Et alii contrarium.

Hedon. As to the sixth part of the messuage and nine acres etc. we say that we did not enter by [William] and [Denise], but by H.; and as to the fifth part that we entered by C. and not by [William] and [Denise]. And as to the third part of the messuage and land, we say that this same [Nicholas] gave these same tenements to [William] and [Denise] and their heirs etc. by this charter which is here; and he bound himself and his heirs to warrant to them and their heirs and assigns. This [William] and [Denise] out of their seisin gave these tenements to this [Thomas] by this charter; (and he produced the charter to the court). If we were impleaded by another than you, you would be bound to warrant to us as the assign of [William] and [Denise]. We ask judgment if you can have an action against your own deed.

Willoughby. Whatever you may say about warranty, we wish to maintain our writ and we say that [William] and [Denise] disseised us.

BEREFORD, C.J. If [William] and [Denise] had disseised you, and then you had made this charter while they were in seisin, and had bound yourselves and your heirs to the warranty, I think that this clause of warranty would bar you for ever; for by the charter made while they were in seisin their tort is purged.

Denham. Is this your deed or not?

Willoughby. We have no need either to acknowledge it or to deny it, for we wish to aver the points of our writ.

STANTON, J., to *Denham.* In what way are you using this exception?

Denham. Sir, as a bar.

STANTON, J. Then use it as a bar.

Denham. When these tenements were in the seisin of [William] and [Denise] whose assigns we are, he made this charter; and bound himself and his heirs to warranty. And if we were etc.

STANTON, J. You lay your exception better now than before.

STANTON, J. What do you answer as to the rest of the tenements?

Denham. Never seised, wherefore etc.

Willoughby. We will imparl.

Afterwards he said:—The tenements which are in demand are not comprised in the charter. Ready etc.

And the others to the contrary.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 212, Kent.

Nicholas Gureward of Sandwich by John Pryket his attorney demands against Thomas le Feure of Sottemere one messuage and twelve acres of land in Sottemere next Westhugham¹ as his right etc. and into which Thomas has not entry unless by William le White and Denise his wife who demised them to him, who unlawfully and without judgment disseised Nicholas thereof after the first crossing of Hen. III. into Gascony etc.

And Thomas by Richard of Chelesfeld his attorney comes and defends his right when etc. and says that whereas Nicholas demands against him one messuage and twelve acres of land etc. he holds those tenements for one messuage and nine acres of land only; and as to a sixth part of the messuage and as to one acre and a half of the tenements he says that he entered into them by John the son of John le Clerk of Dover and Martha his wife and not by William and Denise etc. and as to another sixth part of the messuage and as to an acre and a half of land he says that he entered into the same by one William of Mounbray and Christine his wife and not by William le White and Denise etc. and as to the remaining third part of the messuage and as to three acres of land of the tenements he says that Nicholas can claim no right in the same etc., because he says that when that third part and those three acres of land were in the seisin of William le White and Denise, Nicholas made to William and Denise his charter of feoffment of the same tenements to hold to William and Denise and their heirs and assigns and bound himself and his heirs to warrant those tenements to William and Denise and their heirs and assigns against all

33. BEAUFITZ v. FAUKENER.

I.²

Forma doni pur celui qi fut de saunke partie a celui qi tendit estat.

William de Beufey porta son bref en la³ forme de doun en le *descendere* vers William le fitz Hughe le Fauconer et fust le bref:— Et que post mortem prediete Iuliane et Roberti filii et heredis prediete Iuliane predicto Willelmo filio Iuliane fratri et heredi predicti Roberti *descendere* debent per formam etc.

Malb. Sire, vous veiet bien coment il ount fait William friere et heir Robert. Sire, nous vous dioms qe Juliane prist⁴ baroun R. par noun de qi ele avoit Robert. Et puis prist un⁵ aultre, de qi ele avoit William q'ore demaunde; et issint est cesti William du saunk party a Robert qi heir il se fait. Jugement du bref.

West Hougham, near Dover. ² From *A*, collated with *D* and *T*. The headnote is from *T*. ³ le, *T*. ⁴ *Ins.* a, *D*. ⁵ *Om.* un, *T*.

Note from the Record (*continued*).

men for ever etc. And this William le White gave those tenements by his charter to Thomas to hold to Thomas his heirs and assigns. And he proffers here a charter of those tenements under the name of Nicholas made to William le White and Denise and the assigns etc. which witnesses the feoffment and warranty etc. and likewise the charter of the same tenements under the name of William le White to Thomas. Whereupon he says that if he were impleaded thereof by any other person Nicholas would be bound to warrant those tenements to Thomas as the assign of William le White by virtue of his charter etc. Whereupon he asks judgment etc. and as to the remainder of the tenements etc. he denies that William and Denise disseised Nicholas of the same, as Nicholas says. And this he is ready to aver etc.

And Nicholas says that Thomas has entry into the entirety of the tenements by William le White and Denise etc. and that William and Denise unlawfully disseised Nicholas as he by his writ supposes etc. And as to the charters etc. by which Thomas strives to repel him from demanding (*agendo de*) the third part of the messuage and three acres of land etc. he says that those charters ought not to stand in his way in this behalf, for he says that the tenements which are contained in those charters are not parcel of the tenements which he now demands, but are other. And he asks that this may be enquired by the country.

Issue is joined and a *venire facias* awarded here for the morrow of St. John the Baptist. At that day the sheriff sent not his writ, therefore a *venire facias* is awarded *sicut prius* for the octave of St. Martin.

33. BEAUFITZ v. FAUKENER.¹

I.

Formedon for one who was of the half blood to him who attained an estate.

William Beaufitz brought his writ of formedon in the descender against William the son of Hugh le Faukener, and the writ said:— And which after the death of the aforesaid Gillian and Robert the son and heir of the aforesaid Gillian ought by the form of the gift etc. to descend to the aforesaid William the son of Gillian the brother and heir of the aforesaid Robert.

Malberthorpe. Sir, you see how they have made William brother and heir of Robert. Sir, we tell you that Gillian took for a husband one Robert by name, of whom she had issue Robert; and then she took another husband of whom she had issue William the demandant, so that this William is of the half blood to Robert, whose heir he is made. Judgment of the writ.

¹ This is Fitz., *Formedon*, 49.

Herle. Autrefeez si portames autiel ¹ bref vers vous qe fust abatu, pur ceo q'il avoit ² omissioun fait de Robert qi attendy estat, et vous nous donastes cesti bref. Jugement.

Fris. Auxi bien ³ vous covient il meyntenir cesti bref par ley ⁴ com l'autre, par quei etc.

Scrop. Vous voletz abatre cesti bref pur ceo q'il n'est de l'entier saunk Robert, et vous ne moustrez nul aultre qe deit estre plus pres qe ⁵ cesti al heritage par quei etc., qe sachez en defaute du ⁵ saunk entier si poet le saunk partie demaunder com heir.

Malb. Jeo entenke qe noun, qe plus tost retornereit al donour.

Scrop. Ne serreit mye ⁶ William heir Juliane si ele ⁷ n'ust issue de soun primer baron? *quasi diceret, sic.* Pur quei noun, del houre qe l'issue de soun primir baron est mort?

Malb. Nous la mettoms al bref.

Berr. Vous la mettez come vous voletz. Nous nel entendroms fors coment ⁸ ele deit estre entendu. Et pur ceo nous ⁹ demaundoms ¹⁰ si vous voletz la demorer.

Malb. n'osa etc. mes dit qe lez tenemenz furent donez a Juliane en fee symple.

Herle. Le revers, prest etc. ¹¹

II. ¹²

Un A. porta sun bref de forme de doun vers B.; e le bref fust:—
Precipe B. quod iuste etc. reddat A. unum messuagium etc. quod C. dedit E. et heredibus de corpore suo exeuntibus, et quod post mortem E. et R. filii et heredis E. ad prefatum A. filium et heredem E. et fratrem et heredem ipsius R. descendere debet per formam etc.

Et le cas fust qe le doun se fist a une femme e les heirs de sun corps engendrez. Ele prist baron e avoit un issue. Ele prist autre baroun e avoit autre issue. Le primer issue apres la mort la mere entra e aliena. Le second issue porta cesti bref.

¹ *Sic, D*, un tiel, *T.* ² y avoit, *D.* ³ *Om.* bien, *T.* ⁴ *Sic, D*, le heir, *A, T.* ⁵ de, *D.* ⁶ *Om.* mie, *A.* ⁷ s'il, *D.* ⁸ auxi com, *D.* ⁹ vous, *D.*
¹⁰ demaundez, *D.* ¹¹ *Om.* prest etc., *D.* ¹² From *Y* (fo. 109 v°).

Herle. Heretofore we brought a writ of formedon against you, and it was abated, because an omission was made of Robert who attained an estate; and then you gave us this writ. Judgment.

Friskeney. It is just as necessary for you to justify this writ by the law as the other one, wherefore etc.

SCROPE, J. You wish to abate this writ, because the demandant is not of the whole blood of Robert, and you show us no other person who could be nearer than he is to the inheritance. Wherefore etc., for let me tell you that in default of the whole blood the half blood can demand as heir.

Malberthorpe. I think not. The land would sooner revert to the donor.

SCROPE, J. Would not William be Gillian's heir, if she had not had issue of her first husband? Why not, when the issue of her first husband is dead?

Malberthorpe. We put the exception to the writ.

BEREFORD, C.J. Put it as you will. We shall only understand it as it ought to be understood, and therefore we ask you if you wish the exception to stand.

Malberthorpe dared not let it stand, but said that the tenements were given to Gillian in fee simple.

Herle. The reverse, ready are we etc.

II.

One [William] brought his writ of formedon against [William the son of Hugh], and the writ was, 'Command [William the son of Hugh] that justly etc. he render to [William] one messuage etc. which [Henry] gave to [Gillian] and the heirs of her body issuing, and which after the death of [Gillian] and [Robert] the son and heir of [Gillian] to the aforesaid [William] the son and heir¹ of [Gillian] and brother and heir of [Robert] ought to descend by the form of the gift.

The case was that the gift was made to a woman and the heirs of her body begotten. She took a husband and had issue [a son]. She took another husband and had other issue [a son]. The first issue entered after the death of the mother and alienated. The second issue brought this writ.

¹ The report is inaccurate here. The record shows that the demandant was described in this clause of the writ as the son of Gillian and not as the son and heir of Gillian.

Malm. defendit e dist qe cestui bref n'est pas de forme, qar il se fet heir a la mere e frere.

Ber. Coment duist il dire ?

Malm. Et que post mortem E. et R. filii E. ad prefatum A. filium E. et fratrem et heredem ipsius R. descendere etc.

Ber. Ne prent il sa accion par my la mere auxibien com par mi le frere ? Par quei dites autre chose.

Malm. Par bref e par counte il se fet heir R., mes heir R. ne puet il estre, qar nous vous dioms qe R. est d'autre pere qe A. Jugement si frere del demi saunke puet estre heir au frere d'autre pere.

Scrop. Donke dites qe R. ad altre frere de mesme le pere e mere, kar la court entent ke noun.

Herle. A cel la ne devez estre resceu, qar autrefoiz portames mesme tieu bref vers vous de mesme les tenemenz, e pur ceo qe nostre bref ne fist nule mencion de R. vous le abatistes, e nous donastes tieu bref. Jugement si ore etc. qar autrefoiz deistes qe sanz R. accion ne pooms avoir, e ore dites qe nous ne pooms estre heir R., qe est contrarie a vostre primer dist.

Ber. a Malm. Volez altre chose dire ou tenez vous la ?

Malm. Qe le doun se fist en fee simple e nent en fee taillé, prest del averer.

Et alii contrarium.

III.¹

Willam de Beaufiz porta soun bref de forme de doun en le *descendere* vers W. le fiz Hughe le Franceis. Et fut le bref:—

Precipe etc. . . . et que post mortem predictae Iuliane et Roberti filii et heredis predictae Iuliane predicto Willelmo filio Iuliane predictae fratri et heredi predicti Roberti descendere debent per formam etc.

Malm. Jugement du bref, qe vous veyez bien coment il ount fet W. heir Robert. E issi est ceti W. du sank partie a Robert, e il le fet heir Robert. Jugement du bref.

¹ From *P*. This report closely resembles those in *A*, *D*, and *T*.

Malberthorpe defended and said:—This writ is not according to the prescribed form, for the demandant is made heir to the mother and the brother.

BEREFORD, C.J. What should he say?

Malberthorpe. And which after the death of [Gillian] and [Robert] the son¹ of [Gillian] to the aforesaid [William] the son of [Gillian] and brother and heir of [Robert] ought to descend.

BEREFORD, C.J. Does he not have his action through the mother as well as through the brother? Therefore say something else.

Malberthorpe. By writ and count he makes himself heir of Robert, but heir of Robert he cannot be, for we tell you that Robert is by another father than the father of [William]. Judgment, if a brother of the half blood can be heir to the brother by another father.

SCROPE, J. Then say [if you can] that Robert had another brother by the same father and mother, for the court thinks that [a brother of the half blood can be heir].²

Herle.³ To that you ought not to be received, for heretofore we brought another writ of formedon against you of the same tenements, and because our writ made no mention of Robert you abated it, and gave us this writ. Judgment, if now etc. for heretofore you said that without Robert we could not have an action, and now you say that we cannot be heir to Robert, which is contrary to what you said before.

BEREFORD, C.J. to *Malberthorpe*. Will you say anything else or hold to that?

Malberthorpe. Ready are we to aver that the gift was made in fee simple and not in fee tail.

And the others to the contrary.

III.

William Beaufitz brought his writ of formedon in the descender against William the son of Hugh the [Falconer], and the writ ran:—Command etc. . . . and which after the death of Gillian and Robert the son and heir of the aforesaid Gillian ought to descend to the aforesaid William the son of Gillian the brother and heir of Robert by the form etc.

Malberthorpe. Judgment of the writ; for you see how they have made William the heir of Robert, and this William is of the half blood to Robert, and they make him heir. Judgment of the writ.

¹ He is described as the son and heir of Gillian in this clause in the writ.

² This seems to be the meaning of

the speech.

³ Addressing *Malberthorpe*. A tenant objecting to the form of a writ was bound to frame another as a substitute.

Herle. Altrevez portames autel bref vers vous, e fut abatu pur ceo qe nous feseymes omissioun de Robert qe tendit estat.

Fris. Si vous ne voloites altrefois meygntenir vostre bref, ceo ne fet pas ore vostre bref bon; e demaundoms jugement du bref.

Scrop. Vous volez abatre le bref, pur ceo q'il ne sount pas de l'entier sanke. S'il n'avoit altre heir, ne serroit ceti W. soun heir? par deu, si serroit.

Malm. Jeo crey qe noun, qe plustost revertereyent al doneour, e nostre response est al bref.

Ber. Pernez al bref ou coment qe vous volez. La court prendra la excepcioun cum ele est. Par quei, veez si vous volez la demorer.

Malm. Lez tenementz furent donez a Juliane en fee symple. Prest etc.

Et alii econtra.

IV.¹

Bref de forme de doun fut porté vers un A., et demaunda certain tenemenz les queux un A. dona a Luce et les heirs de son corps engendrez et les queux apres la mort Luce et Robert fitz et heir Luce a² Willem fitz Luce et frere et heir Robert *descendere debet per formam etc.*

Malm. Nous demaundoms jugement de bref qe dit, qe Robert fut fitz Luce engendré de Johan et Willem le fitz Luce engendré de Henri Et desicom il ne furent pas de diverses ventres Johan et Robert par quei Robert ne put estre le dreit heir Johan.

Herle. Einz ces hures porta un bref et feimes la descente de Luce a Willem sanz nomer Robert et pur ceo qe Robert survesqui et tendi estat, le bref s'abati et cesti bref nous fut doné, par quey etc.

Ber. Coment qe vous mettez excepcion pur bref abatre, ceo est proprement al accioun.

Malb. (n'osa demorrer sur cel excepcion.) Qe les tenemenz furent donez en fee simple, prest etc.

Et alii econtra. Et sic ad patriam.

¹ From *M.*

² et, *MS.*

Herle. Heretofore we brought another writ [of formedon] against you, and it was abated, because we omitted Robert who attained an estate.

Friskenev. If you could not heretofore maintain your writ, that does not make your writ good now. We ask judgment of the writ.

SCROPE, J. You wish to abate the writ, because William is not of the whole blood. If Robert had no other heir, would not this William be his heir? By God, he would.

Malberthorpe. I think not. The tenements would sooner revert to the donor. Our answer is to the writ.

BEREFORD, C.J. Take it to the writ or however you will. The court will take the exception as it stands. So consider, if you will abide by it.

Malberthorpe. The tenements were given to Gillian in fee simple. Ready etc.

And the others to the contrary.

IV.

A writ of formedon was brought against one A.; and [the demandant] demanded certain tenements which one [Henry] gave to [Gillian] and the heirs of her body begotten and which after the death of [Gillian] and Robert the son and heir of [Gillian] to William the son of [Gillian] and brother and heir of Robert ought to descend by the form etc.

Malberthorpe. We ask judgment of the writ, which says that Robert was the son of [Gillian] begotten of one John; and William was the son of [Gillian] begotten of Henry¹. And since [the one is of the half blood to the other] and they are not of different ventres, [William] cannot be the right heir of [Robert].²

Herle. Heretofore [we] brought a writ and made the descent from [Gillian] to William without naming Robert. And because Robert survived and attained an estate the writ was abated and we were given this writ. Wherefore etc.

BEREFORD, C.J. Although you put forward your exception to abate the writ it is properly an exception to the action.

Malberthorpe dared not demur on this exception but said that the tenements were given in fee simple, ready etc.

And the others to the contrary, and so to the country.

¹ This statement is not to be found in the writ.

² The text is corrupt, but this seems to be its meaning.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 164, Gloucester.

William the son of Gillian Beaufiz demands against William the son of Hugh le Faukener of Aston Sumeruill, one virgate of land, (except a moiety of an acre,) in Little Wormynton¹ which Henry Beaufiz of Estlecech' gave to Gillian his daughter and the heirs of Gillian's body issuing and which after the death of Gillian and Robert the son and heir of Gillian to William the son of Gillian and brother and heir of Robert ought to descend by the form of the gift, on the ground that Robert died without heir of his body issuing etc. And whereupon he says that Henry was seised of the land etc. and gave that land to Gillian and the heirs of the body of Gillian issuing, by which gift Gillian was seised of the land in her demesne as of fee and

34. BLUNT v. BELACUMBRE.

I.²

Forme de doun—prier estre resceu—qe vouche enfaunt deinz age.

Un A. porta soun bref de forme de doun vers un homme³ et sa femme.⁴ Le baron fit defaute etc.⁵ La femme⁶ pria estre resceu a defendre soun dreit.⁷ Fut resceu et voucha un enfant deynz age.

Pass. Par quey le vouchez?

Denom. Nous⁸ avoms vouché a⁹ nostre perille, par quei s'il seit de age, seit vewe de court,¹⁰ si deynz age, tut ne eoms fet, ceo n'est riens a vous.¹¹

Pass. Dure serreit en ceo cas ou¹² homme ne recoversa mye damages a¹³ delayer le demandant de soun dreit par un tele voucher.¹⁴

Denom. Si nostre baroun par collusion eit aliené¹⁵ nostre chartre,¹⁶ dure serreit si¹⁷ par taunt seymes¹⁸ osté de nostre voucher. D'autrepart homme est lyé a la garrantye¹⁹ sanz chartre²⁰ cum²¹ par eschaunge ou par homage²² et semblable.

Berr. Ditez donqe qe vous estez en le²³ cas, car vous ne plederez mye par put estre.²⁴

¹ Aston Somerville and Wormington are adjoining parishes near Evesham.

² From C, collated with P, Q, and R. ³ autre, R. ⁴ Om. et sa femme, Q.

⁵ apres defaute, R. ⁶ Ins. vynt en court et, R. ⁷ Om. a defendre soun dreit, R.

⁸ Ins. le, R. ⁹ Subs. en, R. ¹⁰ Ins. et, R. ¹¹ For si deynz . . a vous subs. et s'il seit dens age, mes qe nous avoms fet qey serreit ceo a vous, R. ¹² qe, P, un, Q. ¹³ sic, Q, R, et, C, P. ¹⁴ Ins. qe put estre qe cely q'est vouché ne seit pas dedens anz, R.

¹⁵ aloigné, P; aloyné, R. ¹⁶ Ins. et voleit perdre de gree, R. ¹⁷ Om. si, R. Ins. pur nous, R. ¹⁸ serroms, P; seroïoms, Q; estre R. ¹⁹ Ins. tot, R. ²⁰ especiauté, R. ²¹ Om. cum, R. ²² Ins. auncestrel, R. ²³ tiel, R. ²⁴ Ins. mes mettez la chose en fet, R.

Note from the Record (*continued*).

of right by the form of the gift etc. in time of peace in the time of king Edward I., taking the profits thereof to the value etc. by the form etc. and from Gillian descended the right to Robert as son and heir, and from Robert because he died without an heir of his body (*de se*) descended the right etc. to this William who now demands as brother and heir etc. And thereof he brings suit etc.

And William the son of Hugh by his attorney comes and defends his right when etc. and well he denies that Henry gave the land to Gillian and the heirs of her body issuing in form aforesaid, but to Gillian and her heirs in fee simple etc. And of this he puts himself upon the country.

Issue is joined and a *uenire facias* awarded here for the octave of St. John the Baptist.

34. BLUNT *v.* BELACUMBRE.¹

I.

Formedon. Prayer to be received. Intervener when received vouches an infant.

One A. brought his formedon against a man and his wife. The man made default etc. The wife prayed to be received to defend her right. She was received and vouched an infant within age.

Passeley. By what do you vouch him?

Denham. We have vouched him at our peril. Therefore let the court see if he is of age. If he is within age, even though we have no deed, it is nothing to you.

Passeley. It would be hard in a case where a man is not recovering damages to delay him from his right by such a voucher as yours.

Denham. If our husband had alienated our charter by collusion, it would be hard if we were thereby ousted from our voucher. Besides a man may be bound to warranty without charter as by exchange, homage ancestral, and the like.

BEREFORD, C.J. Then say that that is your case, for you will not plead here by 'perhaps.'

¹ This is Fitz. *Voucher*, 245.

Denom. Nous pledoms en ley; et si la court veit qe nous eyoms mester a respondre outre, nous dirroms assez.

Berr. La court agarde qe vous responez; et si vous eyez rien pur vous de vostre voucher qe vous le moustrez.¹

Et non habuit. E il veyva soun voucher et tendy de averer qe lez tenemenz furent donez en fee simple.

II.²

Forma doni, ou femme qe fut resceu a defendre etc. par la defaute son baron voucha a garraunt enfaunt deinz age sanz chartre.

Un homme porta son bref de forme de doun vers un homme et sa femme. Le baron fit defaute etc.,³ issint qe les tenemenz furent en point d'estre perduz. Et survient la femme et pria d'estre resceu. Et fut resceu, et puis voucha un enfaunt deinz age, et ne bouta avaunt nul fait etc.

Pass. Il unt vouché un enfaunt deinz age, et ne mette avaunt nul fait etc. Jugement de voucher.

Denom. Nous l'avoms vouché en nostre peril; et a lui quant il vient en court si est a demaunder, si nous avoms fait pur lui lier etc., et nient a vous.

Pass. Dur serroit en cas ou homme demaunde⁴ point des damages a delaier le demaundaunt de son dreit par un tiel voucher, qe poit estre q'il n'est mie deinz age.

Denom. Greignour duresce serroit si nostre baron par collusion eit aliené nostre chartre et voet perdre de⁵ gre a forclore nous par sa fraude de nostre voucher. Et d'autrepart en cas⁶ homme purra estre lié a la garrantie sanz chartre com en eschaunges et par homage auncestrel.

Ber. Dites donqe q'est⁷ issi com vous aviez dit, et mettez nous en certain etc., car nous ne dorroms⁸ point de fey a pleder sur possibilité qe poit estre.

Denom. Nous pledoms en ley et en voz descreciouns. Si vous veiez qe ley nous chace en ceo cas a moustre fait, nous plederoms outre et dirroms assez.

Berr. La court agarde qe vous responez. Et nous vous demaundoms si vous aviez rien par quey vous le vouchiez.

¹ For et si vous . . . moustrez *subs.* et vous demaunde si vous avez rien par quey vous ly vouchiez, *R.* ² From *T*, collated with *D.* ³ *Om.* etc., *D.* ⁴ ne recovere, *D.* ⁵ *Om.* de, *D.* ⁶ *Ins.* ou, *D.* ⁷ qe ceo est, *D.* ⁸ dirroms, *T.*

Denham. We plead on a point of the law, and if the court thinks that we must answer further, we will say what is sufficient.

BEREFORD, C.J. The court awards that you answer, and if you have anything in support of your voucher that you show it.

He had nothing. He waived his voucher and offered to aver that the tenements were given in fee simple.

II.

Formedon where a woman who was received to defend her right on the default of her husband vouched an infant within age to warranty without charter.

A man brought his writ of formedon against a man and his wife. The husband made default etc. so that the tenements were on the point of being lost. And the wife came forward, and prayed to be received. She was received, and then vouched an infant within age and put forward no deed etc.

Passeley. They have vouched an infant within age and put forward no deed etc. We ask judgment of the voucher.

Denham. We have vouched him at our peril; and it is for him, when he comes into court, and not for you, to ask if we have a deed to bind him.

Passeley. It would be hard in a case, where a man is not asking damages, to delay the demandant from his right, by such a voucher, for perhaps the vouchee is not within age.

Denham. It would be a greater hardship if our husband had collusively alienated our charter and wished purposely by his own fraud to foreclose us from our voucher. And besides there are cases where a man can be bound to warranty without charter, as in exchanges, and homage ancestral.

BEREFORD, C.J. Say then that it is as you have declared and put us in certainty, for we will give no faith to pleading on possibilities, on what might be.

Denham. We are pleading on a point of law, and subject to your discretion. If you think that the law drives us in this case to show a deed, we will plead further, and say what is sufficient.

BEREFORD, C.J. The court awards that you answer. And we ask you if you have anything by which you vouch him.

Et quia non habuit il weyva le voucher, et tendy d'averrer qe les tenemenz furent donez en fee simple.

Et alii eontra.

III.¹

Ou il ne fu nent resceu a voucher enfant de deinz age sanz chartre.

Nota qe un bref de forme de doun ou la femme fust receu a defendre sun droit par la defaute sun baron, pur ceo qe ele fust nomé etc.

Denham. M. vouche a garant par aide de ceste court Johan fiz e heir C. q'est de deinz age, e deit estre somonz en mesme le conté.

Westcot. Vous vouchez enfant de deinz age, e vous ne moustrez nul fet a la cort. Jugement etc. e prioms seisine de terre.

Denham. Ceo n'avom mie mestier, qar jeo pose qe sun auncestre nous eust fet chartre de garantie e la chartre fust perdu, par tant nous ne perdrions nostre voucher etc. Et d'autrepart, si nous tenissons par homage auncestrel, tut ne eussions mie chartre qe tesmoigne etc.

Grantebreg. Jeo pose qe nous lui eussions vouché com homme de plein age; e s'il venist en court il avereit sun age, pur quei ne pouns nous voucher etc?

Hervi, qe ne eussez vous issi voché a vostre peril?

Ber. Dites ceo donqe; car la ou vous vouchez enfant de deinz age, vous biez deus choses delai e defense. E ceo ne poez joier sanz moustrer chartre etc., qar touz jours la court entent malvoisté e collusion ou enfant de deinz age est vouché sanz moustrer chartre ou altre fet etc.

Hedon, qe A. ne dona unkes auxicom sun bref suppose, prest etc.

Et alii contrarium.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 124, Essex.

Roger le Blunt and Sabine his wife and Alice the sister of Sabine by Adam of Brom their attorney offered themselves on the fourth day against John of Belacumbre on a plea of one messuage in Chelmeresford which they claim as the right of Sabine and Alice against him and Cecily his wife, which Walter Elyes of Chelmeresford gave to Walter Bogays and Helewyse his wife and the heirs of the bodies of Walter Bogays and Helewyse issuing and which after the death of Walter Bogays and Helewyse ought to descend to Sabine and Alice the daughters and heiresses of Walter Bogays and Helewyse by the form of the gift etc. And he does not come, and as well

¹ From Y (fo. 109 v°).

And because he had nothing, *Denham* waived his voucher, and offered to aver that the tenements were given in fee simple.

And the others to the contrary.

III.

Where a wife was not received to vouch an infant within age without a charter.

NOTE. A writ of formedon in which the wife was received to defend her right on the default of her husband, because she was named in the writ etc.

Denham. M. vouches to warranty by aid of this court John the son and heir of C. who is within age, and ought to be summoned in the same county.

Westcote. You vouch an infant within age and you do not show any deed to the court. Judgment etc. and we pray seisin of the land.

Denham. We have no need to do so ; for suppose that his ancestor had given us a charter of warranty and that the charter were lost, we should not by that lose our voucher. And besides, if we held by homage ancestral, [we could vouch,] although we had no charter, which witnessed etc.

Cambridge. Suppose we had vouched him as if he were of full age. If he came into court he would have his age. Why can we not vouch him ?

STANTON, J. Would you not have vouched him in that case at your peril ?

BEREFORD, C.J. Then say what you have just supposed, for where you vouch an infant within age you seek two things, delay and defence. And these you cannot enjoy without showing a charter etc., for the court always sees covin and collusion where an infant within age is vouched without a charter or other deed etc. being shown.

Hedon. Ready are we to aver etc. that A. never gave the tenements as his writ supposes.

And the others to the contrary.

Note from the Record (*continued*).

he as Cecily heretofore made default here, to wit, three weeks from Michaelmas last past after they appeared here in court, so that the sheriff was then ordered to take the message into the king's hand and to summon them to be here at this day, to wit, the morrow of the Purification of the Blessed Mary, to hear judgment thereof etc. The sheriff now witnesses that

Note from the Record (*continued*).

the messuage has been taken into the king's hand etc. and that he summoned them etc. And upon this comes Cecily and asks that she by the default of John her husband lose not the messuage, but that she may be received to the defence of her right, and she is received etc.

And Cecily defends her right etc. when etc. and says that Roger Sabine and Alice can claim nothing in the messuage by the form of the gift etc.

35. POMERAY *v.* RALEYE.¹

Forme de doun ou le descent fut chalengé et agardé bon.

Henri le fitz Henri le fitz Geffrai de Moubray porta son² bref de forme de doun. Et fut le bref tiel:—quod Thomas dedit Galfrido de Moubray in liberum maritagium cum C. etc. et que post mortem predictorum G. et C. predicto Henrico consanguineo et heredi descendere debet etc. Et en countaunt³ fit sa descende, de G.⁴ a H. com a fitz et heir, de H.⁴ a cesti H., comme a fitz etc.⁵

Denum. Il ad⁶ fet sa descende de G. a H., de H. a H. comme a fitz etc.,⁷ et son bref veut 'et que post mortem predictorum Galfridi et C. predicto H. consanguineo etc.,' et il ne fet mie⁸ mencioun en le bref de H. le piere. Jugement du bref.

Hedon. H. le piere ne tendi point⁹ estat, par quey il ne covent nent fere mencioun de ly en le bref¹⁰ ne fere ly mort par nostre bref pur ceo qe Geffray son piere survesqui.

*Denum, ut prius.*¹¹

Berr. Depus qe¹² H. le piere ne tendi mie¹³ estat¹⁴ il ne covent ja¹⁵ fere mencioun de H. en son bref¹⁶ par qey quant a cel poynt le bref est asset bon.

Denum. Nous demandoms la vewe.

Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 435d, Hants.

Geoffrey the son of Henry de la Pomeray by Peter Toly his attorney demands against John of Raleye and Joan his wife twenty messuages three hundred and forty acres of land and eight acres of meadow in Northwale-penne¹⁷ which Geoffrey d'Aumale (*de Alba Marlia*) gave to Geoffrey de la

¹ From *R* collated with *C, P, Q*. The headnote is from *C*. ² *Om.* son, *C, P, Q*. ³ *Om.* en countaunt, *C, P, Q*. ⁴ *Ins.* descendi, *R*. ⁵ et heir, *C, P*. ⁶ *Om.* en countaunt . . . il ad, *Q*. ⁷ *Om.* comme a fitz etc., *C, P, Q*. ⁸ pas, *C, P, Q*. ⁹ unges, *C*; nul, *P*; nuyt, *Q*. ¹⁰ *Om.* en le bref, *C, P, Q*. ¹¹ *Om.* Denum ut prius, *C, Q*. ¹² *Om.* Depus qe, *C*. ¹³ nul, *C, Q*. ¹⁴ *Ins.* dount, *C*. ¹⁵ pas, *C, Q*. ¹⁶ *Om.* pur ceo qe . . . son bref, *P*. ¹⁷ This is part of Walpen in Chale in the Isle of Wight.

Note from the Record (*continued*).

for she says that Walter Elyes gave that messuage to Walter Bogeys only, to hold to him and his heirs in fee simple, and not in fee tail etc. as Roger and the others say. And of this she puts herself upon the country.

Issue is joined and a *uenire facias* awarded here for the morrow of St. John the Baptist. And Cecily puts in her place Peter Rys.

35. POMERAY *v.* RALEYE.¹

Formedon where the writ was challenged and awarded good.

[Geoffrey] the son of Henry [de la Pomeray] brought his writ of formedon, and the writ was thus, 'which [Geoffrey d'Aumale] gave to Geoffrey de [la Pomeray] in frank marriage with [Mary] etc. and which after the death of the aforesaid Geoffrey and [Mary] ought to descend to the aforesaid [Geoffrey] as cousin² and heir etc.' And in counting he made his descent thus, from Geoffrey [descended the right] to Henry as to son and heir, and from Henry [it descended] to this [Geoffrey] as son etc.

Denham. He has made his descent from Geoffrey to Henry and from Henry to [Geoffrey], as to son etc. and his writ says, 'and which after the death of the aforesaid Geoffrey and [Mary] to the aforesaid [Geoffrey] cousin etc.' and he makes no mention in his writ of Henry the father. We ask judgment of the writ.

Hedon. Henry the father did not attain an estate, wherefore it is not necessary to mention him in the writ, nor to speak of him as dead in our writ, for Geoffrey his father survived him.

Denham. As before.

BEREFORD, C.J. Since Henry the father did not attain an estate, it is not necessary to mention him in the writ, therefore as to this point the writ is sufficiently good.

Denham. We demand view.

Note from the Record (*continued*).

Pomeray in frank marriage with Mary the daughter of the same Geoffrey d'Aumale and which after the death of Geoffrey and Mary to Geoffrey the son of Henry kinsman and heir of Geoffrey de la Pomeray and Mary ought to descend by the form of the gift etc. And whereupon Geoffrey the son of

¹ The proper names are corrected by the record. 'consanguineus' is used in its place. In the French reports it is represented

² In writs the Latin 'nepos' is never used to denote 'grandson'; but by 'cousin.'

Note from the Record (*continued*).

Henry says that Geoffrey d'Aumale out of his own seisin gave the tenements to Geoffrey de la Pomeraye and Mary to hold in the form aforesaid, and this Geoffrey and Mary by that gift were seised of the tenements in time of peace in the time of king Edw. I. taking thereof the profits to the value etc. And from Geoffrey de la Pomeray and Mary descended the right according to the form etc. to one Henry as son and heir etc. And from Henry descended the right etc. to this Geoffrey the son of Henry who now demands as son and heir etc. and thereof he brings suit etc.

And John by Adam of Fincham his attorney and Joan by Thomas le Crok of Sopyndon her attorney come, and deny their right when etc. And they say that they ought not to answer him on this writ, for they say that whereas Geoffrey the son of Henry demands the tenements against them on the seisin of Geoffrey de la Pomeraye and Mary by means (*per medium*) of Henry the son and heir of Geoffrey and Mary etc. the writ makes no

36. LILLEBURN v. DRAPER.

I.¹

Forme de doun en le *descendere*, ou il dit q'il n'avoit rens par descente jour du bref etc. L'autre dit q'il avoit etc. Et a ceo fut resceu.

Un A. porta soun bref de forme de doun² vers plusours par divers precipes.

Denom. Quant a un precipe, la ou vous demaundez iiij³ acres de terre et demi, nous vous dioms qe⁴ C. nostre femme est joint feffé etc. nent nomé en le bref.⁵ Jugement du bref.

Mugg. Quei responez vous a remenant?

Denom. Ceo est un precipe. S'il abate en partie, il abatera en tut.

Ber. Ceste excepcioun n'est pas a la forme du bref, par quei responez al remenant.

*Denom.*⁶ Un F. tent un demi acre de terre nent nomé en le bref. Jugement du bref.

Mugg. Quant a la noun-tenure,⁷ pleynement tenant⁸; et quant a la joynt tenaunce, soul tenaunt,⁹ prest etc.

Denom. Quant a un autre precipe, vostre pere qi heir vous estez

¹ From *C* collated with *P*, *Q*, *R*. ² *Ins.* en le descender, *R*. ³ *vj*, *P*; *ij*, *Q*, *R*. ⁴ *Om.* nous . . . qe, *P*, *Q*, *R*. ⁵ *Om.* en le bref, *P*. ⁶ *Om.* *Denom.*, *R*. *Ins.* Quant al remenant vous dioms qe, *R*. ⁷ *Ins.* vous dioms qe, *R*. ⁸ *Ins.* jour du bref purchacé, prest etc., *R*. ⁹ *Ins.* des tenemenz qe sont en demaunde jour du bref purchacé, *R*.

Note from the Record (*continued*).

mention of 'which after the death of Geoffrey de la Pomeraye and Mary and Henry the son of Geoffrey and Mary to Geoffrey the son of Henry the kinsman and heir of Geoffrey de la Pomeraye and Mary ought to descend etc.' which is the due form of the writ in this case etc.; and whereupon they ask judgment.

And Geoffrey the son of Henry says that his writ ought not in this case for the reason aforesaid to be quashed etc., because he says that Henry the son of Geoffrey de la Pomeraye and Mary, and the father of himself Geoffrey the son of Henry did not attain (*expectavit*) any estate after the death of Geoffrey de la Pomeraye and Mary, seeing that he died while Geoffrey and Mary were alive etc. Whereupon he asks judgment etc.

A day is given them for hearing their judgment here on the morrow of the Purification, saving to the parties their arguments to be declared on either side (*hinc inde*) etc.

36. LILLEBURN *v.* DRAPER.

I.

Formedon in the descender, where the demandant said that he had no assets by descent on the day when the writ was purchased. The tenant said that the demandant had assets, and was received to this.

One A. brought his writ of formedon against several by divers precipes.

Denom. As to one precipe, where you demand four and a half acres of land, we tell you that C. our wife, not named in the writ, is jointly enfeofed etc. Judgment of the writ.

Miggeley. What do you answer to the rest?

Denham. It is a [writ of] precipe. If it abates in part, it abates in all.

BEREFORD, C.J. That exception is not to the form of the writ, so answer to the rest.

Denham. One F. not named in the writ holds half an acre of land. Judgment of the writ.

Miggeley. As to the non-tenure, we say that you were fully tenant of our demand, and as to the joint tenancy we say that you were sole tenant. Ready are we etc.

Denham. As to another precipe [we say that] your father whose

nous dona ceus tenemenz et obliga, etc. Jugement si encountre le fet vostre auncestre poez rien demaunder.¹

Mugg. Donques grantez vous la forme ?

Denom. Jeo n'ay mestier a ceo pleder.

Mugg. Depus qe vous ne la dedites pas,² nous prioms qe la court le tenke a granté.³ Et d'autre part⁴ vostre response n'est mye pleyne, si vous ne⁵ diez qe assez nous est descendu en cesti bref de forme de doun.⁶

Denom. Assez vous fust descendu.

Mugg. Rienz⁷ ne nous fut descendu⁸ al jour de bref purchacé n'est huy ceo jour,⁹ prest etc.

Berr. Si tenemenz vous fuerent descenduz apres la mort vostre pere en fee symple¹⁰ et vous avez aliené ceus tenemenz par collusioun,¹¹ quidez vous ore recoverer lez¹² tenemenz en fee taillé ? Nanil, car issi par vostre engyn¹³ vous le ostrez de soun avantage. De pus q'il tende¹⁴ qe assez vous descendy de par ly, par qi fet etc. il vous covent respondre¹⁵. Et d'autre part par taunt qe ceus tenemenz vous descenderent par mye ly en fee symple, vostre accioun par mye la force¹⁶ fut esteynt par fet¹⁷ de la garrantie, par quei par vostre alienacioun accioun ne vous put de novel accrestre.

Mugg. Riens ne nous descendy par mye ly, prest etc.

Et alii e contra.

II.¹⁸

En un bref de forme de doun le tenaunt dit qe le pere le demaundaunt ly enfefa et obligea, etc. Le demaundaunt conust bien, mes il dit q'il n'avoit rien par descende le jour de bref purchacé. Le tenaunt dit qe assez lui fut descendu apres la mort son pere.

Ber. Si assez vous fut descendu et par engyn a un autre avez aliené, quidez vous par taunt aver accioun, *quasi diceret*, Non. A plus

¹ *For* auncestre . . . demaunder *subs.* piere qy heir etc. pussez accioun aver, *R.* Part of a later speech attributed to Miggeley and Denham's reply are here inserted in *R.* See note³ below. ² *For* ne . . . pas *subs.* ne dites point, *P* ; ne le dites point, *R.* ³ The rest of this and the following speech are inserted earlier in *R.* See note¹ above. ⁴ *Om.* Et d'autre part, *R.* ⁵ *For* si vous ne *subs.* sanz ceo qe vous, *R.* ⁶ *For* en cesti . . . doun *subs.* en fee simple qar nostre brief est une forme de doun ou l'eir ne serra mie barré par la garrantie si rien ne ly seit descendu, *R.* In *R* this is a continuation of the first sentence of Miggeley's last speech, as printed above, but introduced by the words, 'Et vous dioms qe.' ⁷ *For* Rienz . . . descendu *subs.* Nous n'avioms rien par descende, *P.* ⁸ *Om.* n'est . . . jour, *P, R.* *Om.* huy ceo jour, *Q.* *For* n'est . . . jour, *subs.* ne fut le jour du bref purchacé, prest etc. et demaundoms jugement, *R.* ⁹ *Ins.* de queux vous esteiez seisi apres sa mort, *R.* ¹¹ engin, *R.* ¹² *Ins.* autrez, *R.* ¹³ malice, *R.* ¹⁴ *Ins.* d'averer, *R.* ¹⁵ *Ins.* par la, *R.* ¹⁶ forme, *P, Q, R.* ¹⁷ force, *R.* ¹⁸ From *M.*

heir you are gave these tenements to us and bound himself and his heirs to warranty. Judgment, if you can demand anything against the deed of your ancestor.

Miggeley. Then do you grant the form?

Denham. I have no need to plead on that.

Miggeley. Since you do not deny it, we pray that the court take it for granted. And besides in this writ of formedon your answer is not complete unless you say that assets have descended to us.

Denham. Assets have descended to you.

Miggeley. We had not assets by descent on the day when the writ was purchased, nor have we to-day. Ready etc.

BEREFORD, C.J. If tenements descended to you in fee simple after the death of your father, and you have alienated them by collusion, do you think that now you will recover your tenements in fee tail? No, for in that way you would by your craft oust him from his advantage. Since he offers to aver that assets have descended to you from him by whose deed etc. you must answer him. Besides in so far as these tenements have descended to you in fee simple from him [by whose deed etc.] your action based on the [form] of the gift was extinguished by force of the warranty. Therefore by your alienation an action cannot accrue to you afresh.

Miggeley. Assets have not descended to us through him. Ready etc.

And the others to the contrary.

II.

In a writ of formedon the tenant said that the father of the demandant enfeofed him and bound [himself and his heirs to warranty]. The demandant acknowledged this, but said that he had nothing by descent on the day when the writ was purchased. The tenant said that assets had descended to him after the death of his father.

BEREFORD, C.J. If assets have descended to you and by craft you have alienated them to another, do you think that you will have an

tost qe vous avez par descende a la value vostre accioun est esteynt, et accioun une fietz esteint etc. remeint etc. par quei etc.

A un autre Precipe ou il y avoit rente en demaunde le tenaunt dit q'il tynt nule rente ne a nul fet entendent. Et dit qe la terre mys en vewe dont il clament cele rente estre etc. si tent Johan joynt ove sa femme nent nommee etc. Jugement.

Mug. Le terre n'est pas en demaunde, einz la rente, dont vous estes deforceour.

Scrop. S'il porta un asisse de novel disseisine de la rente et deist q'il n'eust rien etc. si noun joynt etc. n'abatera pled ? ¹ *quasi diceret* Sic.

III.²

Ou il fust chacé si rien lui fust descendu apres la mort l'auncestre ; e en un autre Precipe ou il demanda rente le bref fust abatu pur ceo qe les tenemenz dount la rente issit et ou la vewe fust fete il les tient joint ove A. sa femme etc.

Un A. porta un bref de forme de doun en le *descendere* vers B. e demanda iiij acres de terre en Lilleborn.

Lauf. defendi etc. e dit qe accion ne poeit il avoir, qe sun auncestre C. par noun nous enfeffa de ceux tenemenz e obliga lui e ses heirs a la garantie e si nous fuissoms enpledé par autre, il nous serroit tenuz a la garantie. Jugement, si encountre le fet sun auncestre accion puisse avoir.

Mugg. Nous n'avom rien par descende. Prest etc.

Lauf. Assez vous est descendu.

Mugg. qe nous n'aviom rien le jour de cestui bref purchacé, ne ore n'avom fors qe fee taillé, prest etc.

Bereford. Il vous dient qe assez vous est descendu.

Mugg. Si jeo fusse vouché a garant par le fet mon auncestre, tut eusse jeo eu par descende e jeo le eusse aliené devant qe jeo fusse vouché e jeo eusse perdu en la garantie, jeo ne feisse mie a la value des altres terres. Auxi par de cea.

Ceo³ n'est pas semblable la ou vous estes vouché e la ou devez estre barré par clause de garantie ut patet intuitu, quia melior est condicio possidentis quam petentis.

¹ Seemingly an error for 'pas le bref.' ² From Y (fo. 113 r°).
the MS. this is a continuation of Miggeley's speech. See note ² opposite.

³ In

action thereby? I think not. Rather is your action extinguished to the value of what you had by descent; and an action once extinguished remains extinguished. Wherefore etc.

To another precipe in which rent was in demand the tenant said that he held no rent, nor etc.¹ He said that [Henry] holds the land put in view, whence the demandant claimed that the rent issued, jointly with his wife not named etc. Judgment.

Miggeley. The land is not in demand, but the rent, and you are the deforciant thereof.

Scrope. If he brought an assize of novel disseisin of the rent, and said that he had nothing etc. unless jointly with his wife, would not the writ abate? I think that it would.

III.

A case where a demandant was driven to say whether assets had descended to him after the death of his ancestor. On another precipe where he demanded rent the writ was abated, because he held the tenements, whence the rent issued and where view was made, jointly with his wife etc.

One A. brought a writ of formedon in the descender against B. and demanded four acres of land in Lilbourn.

Laufare defended etc. and said that action the demandant could not have, because his ancestor C. by name enfeofed us of these tenements, and bound himself and his heirs to warranty; and if we were impleaded by another, he would be bound to warrant to us. Judgment if against the deed of his ancestor he can have an action.

Miggeley. We have nothing by descent. Ready etc.

Laufare. Assets have descended to you.

Miggeley. We had none on the day when this writ was purchased, nor have we any now, except fee tail. Ready etc.

BEREFORD, C.J. They tell you that assets have descended to you.

Miggeley. If I were vouched to warranty by the deed of my ancestor, although I once had assets by descent, but had alienated them before I was vouched, and I lost on the warranty, I should not give to the value of the lands demanded; so also in this case.

[BEREFORD, C.J.] Where² you are vouched and where you ought to be barred by a clause of warranty are not like cases, as is apparent from the maxim, "melior est condicio possidentis quam petentis."

¹ The meaning of the text is not clear here. however, seems to require that it should be attributed either to the Chief Justice or to Laufare.

² In the MS. this is a continuation of Miggeley's speech. The context,

Et *Bereford* postea cogebat *Mugg.* ad cognoscendum si aliquid descendebat ¹ petenti post mortem antecessoris cuius factum etc.

Mugg. Rien n'ad ne rien ne lui fust descendu e prest del averer.

Et alii contrarium.

Et *A.* portauit aliud precipe vers *G.* e demanda vj souz de rente etc.

Lauf. Nous tenoms les tenemenz ou la vewe fust fete de la rente joint ove nostre femme sanz qi nous ne pooms ceux tenemenz charger ne descharger. E demandoms jugement, si a cestui bref a demander rente sanz nostre femme devons respondre.

Mugg. Nostre demande si est rente e n'est pas terre, par quei il covient qe vous responez autrement a la rente.

Hervi. Respondez autre chose.

W. Denham. Nous dioms qe nous sumes jointement feffez des tenemenz ou la vewe fust fete ove nostre femme par ceste chartre qe cy est etc. e demandoms jugement si sanz nostre femme pouns ceux tenemenz charger ou descharger etc.

Et postea le bref quant a celui precipe s'ambatit etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 62d, Northants.

William the son of John of Lilleburne by Robert of Berewyk his attorney demands against Nicholas le Draper four acres of land in Lilleburne, and against John Aleyn junior and Isabel his wife three acres of land and three shillings of rent in the same vill, and against John de la Doune one acre and a half of land in the same vill, and against John Leulyn one acre and a half of land in the same vill, and against John the son of Nicholas three acres and a half of land in the same vill, and against Roger le Muner and Margery his wife one acre of land in the same vill, and against Simon of Lindeseye one acre of land in the same vill, and against Thomas Hereward four acres of land in the same vill, and against Nicholas le Clerk one acre of land in the same vill, and against William Stote one acre of land in the same vill, and against William Aunfrey one acre of land in the same vill, and against Henry le Merther nineteen pence and a halfpenny of rent in the same vill which Henry the son of Robert of Lilleburne and William his brother gave to John the son of Robert of Lilleburne and the heirs of the body of John issuing and which after the death of John to William the son and heir of John ought to descend by the form of the gift etc.

And Nicholas le Draper and the others by Henry Malore their attorney come and deny his right when etc., and Nicholas as to the tenements demanded against him says that he ought not to answer him thereof on this writ because he says that he does not hold those tenements entirely; for he says that one Thomas Hichthe holds thereof half an acre of land and held it

¹ descendebit, Y.

And afterwards BEREFORD compelled *Miggeley* to acknowledge whether assets had descended to the demandant after the death of the ancestor, whose deed etc.

Miggeley. He has nothing, nor did assets descend to him; and ready are we to aver this.

And the others to the contrary.

And A. brought another precipe against G. and demanded six shillings of rent etc.

Laufare. We hold the tenements where view of the rent was made jointly with our wife, without whom we can neither charge nor discharge these tenements. We ask judgment if we ought to answer this writ demanding rent without our wife.

Miggeley. Our demand is of rent and not land, wherefore you must answer otherwise as to the rent.

STANTON, J. Make some other answer.

W. Denham. We say that we are enfeofed of the tenements where view was made jointly with our wife, by this charter, which is here etc. We ask judgment if without our wife we can charge or discharge etc. these tenements.

And afterwards as to this precipe the writ abated.

Note from the Record (*continued*).

on the day when William the son of John purchased his writ thereof against him, to wit 12 June 2 Edw. II.; and this he is ready to aver; whereupon he asks judgment of the writ etc.

And William the son of John says that Nicholas held the tenements demanded against him entirely on the day of the purchase of the writ; and he asks that this may be enquired by the country; and Nicholas likewise.¹

And John Aleyn and Isabel as to two acres of land and three shillings of rent demanded against them and likewise John de la Doune as to one acre of land demanded against him and also John Leulyn of half an acre of land of the land demanded against him, and likewise Thomas Herewad as to three acres and a rood of land of the land demanded against him and also Nicholas le Clerk William Stote and William Aunfrey of the land demanded against them singly, say that John the son of Robert the father of William whose heir he is gave granted and with his charters confirmed those tenements to John Aleyn and Isabel John de la Doune John Leulyn Thomas Nicholas William Stote and William Aunfrey to hold to John Aleyn and the others and their heirs for ever and bound himself and his heirs to warranty etc. by four charters which John Aleyn and Isabel proffer and two charters which John de la Doune proffers and one charter which John Leulyn proffers and four charters which Thomas proffers and three charters which Nicholas

¹ The word 'cras' is here written in the margin of the roll.

Note from the Record (*continued*).

William Stote and William Aunfrey proffer under the name of John the father etc. and which witness this whereupon they say that if they were impleaded of those tenements by another, William the son of John would by the deeds of his father be bound to warrant to them, and they ask judgment etc.

And William the son of John says that by the reason aforesaid he ought not to be retarded from his action; for he says that after the death of John his father no tenements descended to him by hereditary right from John in fee simple, by which he is bound to warrant to them etc.

And John Aleyn and the others say that after the decease of John the father of William lands and tenements descended to William in fee simple by descent from John at Lillebourne and Claycotes,¹ from which he can warrant to them; and of this they put themselves upon the country.

Issue is joined and a *uenire facias* awarded here for the quindene of Trinity.

And John Aleyn and Isabel as to one acre of land the residue etc. vouch thereof to warranty Reynold Sampson of Lylleburne.

And Roger le Mouner and Margery say that they hold half an acre of land only and vouch thereof to warranty Henry Rauf of Lylleburn. And

37. ANON.

I ²

Fourme de doun ou le vouché vynt et rendy, ou ³ le tenaunt tendit d'averer q'il ne fuist mye mesme celui q'il avoit vouché et ne fuist mye resceu.

Un home porta bref de fourme de doun vers un tenaunt qe voucha a garraunt un P. Burr. de W. P. fuist en court et entra meintenaunt en la garrauntie et rendit.

Lauf. Ceo n'est mye celui P. qe nous avoms vouché, prest etc.

Berr. N'avietz vouché P. Burr. de W. ? et P. Burr. de W. est a la barre, coment poietz vous dire q'il n'est mie celui ?

Lauf. Nous voloms averrer q'il n'est mye celui P. qe nous avoms vouché.

Denom. Fetes ascun difference de noun ou de ville etc.

Lauf. ut prius.

Ber. Il covent qe vous lui facetz ascun difference avaunt qe vous soietz resceu al averement.

Et pur ceo q'il ne pout mettre difference, fuist agardé qe le

¹ Lilbourn and Claycotes are on the Leicestershire border of Northamptonshire.

² From *B*, collated with *G*.

³ et, *G*.

Note from the Record (*continued*).

Simon of Lindeseye says that he holds half an acre of land only, and vouches to warranty thereof William Stote.

Let them have them here at the term aforesaid by aid of the court, and they are summoned in the same county etc.

And John de la Doune as to the half acre of land the residue etc. of the tenements says that he is enfeoffed of that half acre jointly with one Roger his brother who is not named in the writ. And also John Leulyn says that he is enfeoffed of an acre of land residue etc. jointly with one Rose his wife. And likewise John the son of Nicholas as to all the land demanded against him says that he is enfeoffed of that land jointly with one Amice his wife. And Thomas Hereward says that he is enfeoffed of three roods of land residue etc. jointly with one Rose his wife. And Henry le Merther says that he is enfeoffed of one messuage in the vill aforesaid, whence William the son of John asserts that the rent aforesaid proceeds, jointly with one Joan his wife who is not named in the writ. And they ask judgment etc.

And William the son of John cannot deny this. Therefore it is awarded that John de la Doune and John Leulyn and John the son of Nicholas and Thomas Hereward and Henry as to these parcels go thereof without day, and that William and his pledges of prosecuting as to this be in mercy etc.

37. ANON.

I.¹

A case of formedon, in which the vouchee came and rendered the tenements; and the tenant then offered to aver that the vouchee was not he whom he had vouched. The tenant was not received to this.

A man brought a writ of formedon against a tenant who vouched to warranty one P. B. of W. P. was in court and forthwith entered into warranty and rendered the land.

Laufare. This is not the man P. whom we have vouched. Ready are we to aver it.

BEREFORD, C.J. Have you not vouched P. B. of W.? P. B. of W. is at the bar. How can you say that he is not the man whom you vouched?

Laufare. We will aver that he is not the man P. whom we have vouched.

Denham. Make some difference in his name or his vill.

Laufare, as before.

BEREFORD, C.J. You must make some difference before you are received to the averment.

And because he could assign no difference, it was awarded that

¹ This version appears in the Old Edition on p. 95.

demaundaunt recovery¹ vers le tenaunt et le tenant a la value vers le garraunt, s'il eit de quei; par BER.

II.²

Nota qe la ou P. voucha a garant Johan de Coleville qe deit estre somoné en le conté etc. la vient un garson e apparust e dit q'il avoit a noun Johan de Coleville e garranta e rendist au demandant sa demande.

Hervy (a l'attourné le tenant). Est celui garson le garrant qe vous avez vouché?

L'attourné. Sire, jeo ne say.

Hervy. Querez la verité tanke a demeyn.

A queu jour l'attourné ne poet assigner nule difference entre le garant e celui qe garanta, par quei le demandant recoversa sa seisine vers le tenant e le tenant vers le garant etc.

38. READING v. STOKE.

I.³

De medio ou le tenant mist avant une fyne qe prova l'acquittance. E le meen dit qe les services e la seigneurie demurreient en la mayn un tenant per legem Anglie, nec aliquid habuit per descensum etc., ideo uiuente tenente per legem Anglie, non iacet acquietancia.

Un homme porta son bref de meen etc.

Kyng. Quei avetz pur nous lier a l'acquittance?

Pass. Veetz ci⁴ une fine qe se leva entre une tele vostre mere, qi heir etc. e nostre piere qi heir nous sumes, par quele fyne vous estes tenu de nous acquiter etc.

Kyng. Nous grantoms bien la fyne, mes nous vous dioms qe nous n'avoms rens⁵ descenduz quant a ore de parte nostre mere, par ou nous devons estre chargé par son fait. Eynz un tiel tent les tenemenz e reseit les services qe furent a nostre mere,⁶ et hoc par la curteisie

¹ recuere, *G*.

² From *Y* (fo. 97 v°).

³ From *D* collated with *A* and *T*.

⁴ issint, *A*; icy, *T*.

⁵ *For* nous n'avoms rens *subs.* rien nous est, *A*; *Sim.*, *T*.

⁶ *Om.* par ou nous . . . a nostre mere, *A*, *T*.

the demandant should recover against the tenant, and that the tenant should recover against the warrant to the value of the lands demanded, if he had wherewith—by BEREฟอร์ด, C.J.

II.¹

NOTE.—One P. vouched to warranty John de Coleville who had to be summoned in the county of X. A boy came to the court and made his appearance saying that he was called John de Colville, and he warranted and rendered to the demandant his demand.

STANTON, J. (to the tenant's attorney). Is this boy the warrant whom you have vouched?

The Attorney. Sir, I do not know.

STANTON, J. Ascertain the truth before tomorrow.

At that day the attorney could not assign any difference between the warrant and the man whom the tenant had vouched. Therefore the demandant recovered his seisin against the tenant, and the tenant recovered against the warrant etc.

38. READING v. STOKE.²

I.

A writ of mesne, on which the tenant put forward a fine which proved the acquittance. The mesne said that the services and the seignoury remained in the hands of a tenant by the law of England, and that he had nothing by descent. It was therefore adjudged that in the lifetime of the tenant by the law of England, acquittance did not lie.

A man brought his writ of mesne etc.

Kingshemede. What have you to bind us to the acquittance?

Passeley. See here a fine which was levied between [Isabel] your mother, whose heir you are, and our father whose heir we are. By this fine you are bound to acquit us etc.

Kingshemede. We grant the fine, but we tell you that as yet we have nothing by descent from our mother, whereby we should be charged by her deed. But a certain man holds the tenements and receives the services which belonged to our mother, and this by the

¹ Notwithstanding the difference in the proper name of the vouchee, this is almost certainly the same case as the last. It should, however, be noticed

that this case occurs in Y among the writs of entry, whereas the case in the first version is one of formedon.

² This is Fitz. *Mesne*, 52.

d'Engleterre¹ Et n'entendoms mye qe vers nous quant a ore acquitance puissetz desreigner².

Pass. Sire, il ount conu l'aquitance et q'il est heir du saunk. Et nous ne pouns vers autre qe vers lui q'est nostre meen de dreit nostre bref user. Jugement, e prioms noz³ damages.

Ber. Il ount conu le fait en la manere com il ount dit, *videlicet*, qe certeyn homme tent etc. issint qe quant ascune ren lui soit descendu de part sa mere par qi fait il est obligé, donqe fra il ceo qe appent, et non ante. Par quei damages ne poetz recoverir vers lui, avant qe vous lui puissetz chacer a l'aquitance Et pur ceo dites s'il eit rens par descent ou noun.

Pass. Prest etc.

Ber. S'il eit par descente il vous acquitera, e si noun, attendez vostre temps etc.

II.⁴

De medio vers le heir tenant⁵ ou le tenant par la ley d'Engleterre fut seisi des services.

En⁶ un bref de men.

Denom. Quei avez de l'aquitance ?

West. Wez cy une fyn par la quele vostre mere qi heir etc. ensemblement ove soun baroun etc. par la quele ele se obliga.

Denom. Nous vous dioms qe G. baroun nostre mere qe fut partie a ceste fyn est seisi de voz services ove touz lez terres et tenemenz qe fuerent a nostre mere et tent par la ley d'Engleterre⁷ issit qe nous n'avoms riens par descent de ly. Jugement si de ceo⁸ vous pussez devers nous acquitance dereyner.

West. Est ceo le fet vostre ancestre ou noun ?

Denom. Nous grantoms bien.⁹ Mes nous ne vous devons acquiter vivant cely qe tent par la ley d'Engleterre qe est seisi de quantqe nostre auncestre avoit, et riens nous est descendu par my cele.

Westcot. Nous demaundoms l'aquitance del homage. Et autre ne poms lyer a l'aquitance for qe¹⁰ ly qe put nostre homage receyvre.¹¹

Berr. Vous ne ly poez lyer a¹² ceste acquitance, si noun par un de ij voies, ou pur ceo q'il est seisi de voz services ou par le fet soun

¹ diengleterre, A. ² destr', D. ³ vos, A, T. ⁴ From C collated with P, Q. ⁵ This word is inserted in error for 'femme.' ⁶ Om. en, P. ⁷ Ins. e, P. ⁸ Om. de ceo, Q. ⁹ Om. bien, Q. ¹⁰ Om. qe, P. ¹¹ For for qe . . . receyvre subs. si noun cely qe le deit resceivere, Q. ¹² de, P.

courtesy of England. We do not think that as yet you can deraign acquittance against us.

Passeley. Sir, they have acknowledged the acquittance and that he is heir of the blood. We cannot use our writ against any other than against him who is our mesne in the right. We ask judgment and pray our damages.

BEREFORD, C.J. They have acknowledged the deed in the way they have stated, that is to say, that a certain man holds etc. so that when anything descends to the mesne from his mother by whose deed he is bound, then and not before will he do what he has to do. Therefore you cannot recover damages against him until you can force him to the acquittance, so say if he has assets by descent or not.

Passeley. Ready are we to aver that he has assets.

BEREFORD, C.J. If he has assets by descent he will acquit you, but if not abide your time etc.

II.

Of a writ of mesne against the heir, where the tenant by the law of England was seised of the services.

In a writ of mesne.

Denham. What have you of the acquittance?

Westcote. See here a fine by which your mother whose heir you are, together with her husband etc. And by this fine she bound herself to the acquittance.

Denham. We tell you that [Thomas] the husband of our mother, who was a party to this fine, is seised of your services together with all the lands and tenements which belonged to our mother, and holds them by the law of England, so that we have nothing by descent from her. Judgment if with that you can deraign acquittance against us.

Westcote. Is this the deed of your ancestor or not?

Denham. We grant it. But we ought not to acquit you in the lifetime of him who holds by the law of England, and is seised of all that our ancestor had; for nothing has descended to us from her.

Westcote. We demand acquittance of the homage, for we cannot bind any other person to it save him who can receive our homage.

BEREFORD, C.J. You cannot bind him to this acquittance save in one of two ways, either by the fact that he is seised of your services or

auncestre. Mes par seisine dez services nent, qe le baroun sa mere lez tent etc. ne¹ par la fyn sanz ceo qe riens ne² ly seit³ descendu. Et pur ceo dites s'il⁴ ad rens par descent.

Westcot. Prest etc.

Berr. S'il eit par descent, il vous acquitera, et si noun attendez vostre tens.

E⁵ fut agardé q'il suyt⁶ bref a viconte d'enquere s'il avoit⁷ autre tenementz par descente etc.⁸

III.⁹

ou l'aquitance fut agardé vers le heir du saunke, e nent chargé sanz ceo qe lui ne fut descendu etc.

L'abbé de Redyngge porta sun bref de meen vers Roger de Stoke e dit qe atort ne l'aquite des services qe Edmund counte de Warrewike de lui demande; et pur ceo atort qe, la ou il tient de lui un mees e une carué de terre ove les appurtenances en C. par homage fealté e par les services de v souz e vj deners, la le dit E. le demande homage, e a ceo fere lui destreint par boefs etc. e sovent etc.

S. King. defendi e desclama en ces services.

Hervi. Ou est J. ?

Kingesham. Vous le avez par atturné.

Hervi a l'atturné, Quei avez a noun ?

L'atturné. Sire, W.

Hervy. Desclamez vous en les services le abbé ?

L'atturné. Sire, Oil.

Hervi. A demein etc.

Postea secundo die *Hervy* repeciit predicta *W. Bereford.* qui dixit, Ou sunt les parties ?

Westcote. Vous avez l'abbé qe demande ceste quitance vers Johan de C. del homage qe le counte de Warrewike lui demande etc.

Kingesh. Quei avez de l'aquitance ?

Westcote. Nous vous dioms qe un G. abbé de C. predecessour mesme cesti abbé porta bref de meen vers T. de B. e Luce sa femme

¹ na, C. . . ² Om. ne, P. . . ³ fut, P; fust, Q. . . ⁴ q'il, Q. . . ⁵ This paragraph is from P collated with Q. . . ⁶ Om. q'il suyt, Q. . . ⁷ Ins. ou noun, Q. . . ⁸ Om. autre . . . etc., Q. . . ⁹ From Y (fo. 187 v°).

by the deed of his ancestor. But by seisin of services you cannot, for the husband of his mother holds them etc., nor can you by fine unless assets have descended to him. Therefore say if he has assets by descent.

Westcote. Ready are we to aver that he has.

BEREFORD, C.J. If he has assets by descent, he will acquit you. If not, abide your time.

And it was awarded that he should sue a writ to the sheriff to enquire if he had any other tenements by descent.

III.¹

Where the acquittance was awarded against the heir of the blood, but it was not to be charged against him unless assets had descended to him.

The abbot of Reading brought his writ of mesne against Roger of Stoke and said that wrongly he did not acquit him of the services which Edmond earl of Warwick demands of him, and for this wrongly because, whereas the abbot holds of Roger a messuage and a carucate of land with the appurtenances in C. by homage fealty and the service of five shillings and sixpence, the said Edmond demands from him homage and distrains him to do it by his oxen etc. and often etc.

S. Kingeshemed defended and disclaimed these services.

STANTON, J. Where is [Roger]?

*Kingeshemed*². You have him here by attorney.

STANTON, J. (to the attorney). What is your name?

The Attorney. W., Sir.

STANTON, J. Do you disclaim the services of the abbot?

The Attorney. Yes, Sir.

STANTON, J. Tomorrow etc.

Afterwards, on the second day, STANTON, J. rehearsed the aforesaid matter to BEREFORD, C.J., who said, Where are the parties?

Westcote. You have here the abbot who demands against [Roger of Stoke] acquittance from the homage which the earl of Warwick demands from him etc.

Kingeshemed. What have you of the acquittance?

Westcote. We tell you that one [Robert] abbot of [Reading] predecessor of this abbot brought a writ of mesne for the said services

¹ The proper names in this report are corrected by the record.

² The name Kingesham on the opposite page is doubtless an error.

devant Sire P. de M. e ses compaignons justices erranz en le conté de Warrewike l'an etc. pur les ditz services ou les avantdiz T. e L. sa femme granta l'aquitance pur les avantdiz services, sur queu bref fin se leva etc. ou les avantdiz T. e L. granterent l'aquitance pur eux e pur les heirs L.; et estre ceo T. e L. e les heirs l'aquiteront vers tote gent etc. Et Johan si est heir Luce etc.

King. Nous ne pooms dedire qe nous ne sumes heir Luce, einz dioms qe le dit T. tient tut le heritage L. par la curtesie d'Engleterre, a quei le abbé fet les ditz services, pur quei etc. e demandoms jugement, desicom rien ne avom par mi L., si par le fet L. devons aquiter.

Westcote. Vous estes heir du saunke.

Ber. Il vous conust bien q'il est heir L., mes q'il n'ad rien etc. e qe T. tient par la curtesie etc.

Westcote. Sire, nous sumes distreint pur homage, le quel service nul nous ne puet aquiter mes l'eir du saunke.

Ber. Le volez vous charger la ou il ne prent nul profit, *quasi dicere*, noun ?

Loveday. Sire, il ad assez par descent, prest del averer.

Bere. Pur ceo qe vous dites q'il ad assez etc. si agarde la court q'il vous aquite, s'il eit de quoi. E suyez bref a viconte q'il soit distreint de vous aquiter s'il eit de quoi.

Westcote. Nous prioms noz damages.

Ber. Coment volez aver vos damages e uncore vous ne savez s'il vous deit aquiter ou noun ? car s'il n'eit de quoi vous demorrez chargé tanke au temps.

IV.¹

Un A. porta son bref de meen vers B.

Denum. Par qey nous volet lier a l'aquitaunce ?

Westcote. Veet issi une fyn par la quele vostre miere qe heir vous estes ensemblement ov son baroun granta de nous aquiter et defendre vers tote gent. (Et mist avant le fyn qe ceo testmoigna.)

Denum. Nous vous dioms qe G. baroun nostre miere qe fut partie a la fyn est seisi de vos services ove toux les terres et tene-menz des quex nostre auncestre morust seisi, et les tent par la ley

¹ From R.

against Thomas of [Etyndone] and [Isabel] his wife before Sir [John de Vaux] and his fellow justices journeying in the county of [Wilts] in the year [13 Edw. I.] and thereon Thomas and [Isabel] granted the acquittance for the services aforesaid. And upon this writ a fine was levied etc. by which Thomas and [Isabel] granted the acquittance for them and the heirs of [Isabel], and further that they would acquit him against all men etc. And [Roger] is the heir of [Isabel].

Kingeshemede. We cannot deny that we are the heir of [Isabel]; but we say that Thomas holds all the inheritance of [Isabel] by the courtesy of England, and to him the abbot does the said services. Wherefore, seeing that we have nothing through [Isabel], we ask judgment if by the deed of [Isabel] we should acquit him.

Westcote. You are heir of the blood.

BEREFORD, C.J. He acknowledges to you that he is the heir of [Isabel], but he [says] that he has nothing etc. and that Thomas holds by the courtesy etc.

Westcote. Sir, we are distrained for homage, and of this service nobody can acquit us but the heir of the blood.

BEREFORD, C.J. Can you charge it, where he takes no profit? I think not.

Loveday. Sir, he has assets by descent. Ready are we to aver it.

BEREFORD, C.J. Because you say that he has assets etc. the court awards that he acquit you, if he have wherewith to do so. And do you sue a writ to the sheriff, that the mesne be distrained to acquit you, if he have wherewith.

Westcote. We pray our damages.

BEREFORD, C.J. How can you have damages, for as yet you do not know whether he ought to acquit you or not? If he have not wherewith to acquit you, you will remain charged until the day [when he has assets].

IV.

One A. brought his writ of mesne against B.

Denham. By what will you bind us to the acquittance?

Westcote. See here a fine by which your mother whose heir you are together with her husband granted that she would acquit and defend us against all men. (And he put forward the fine in witness of this.)

Denham. We tell you that [Thomas] the husband of our mother who was a party to the fine is seised of your services with all the lands and tenements of which our ancestor died seised, and holds them by

d'Engleterre, issi qe nous n'avoms riens par descente de heritage de part nostre miere. Jugement si vers nous quant a ore pusset ceste acquitaunce dereyner.

Westcote. Cest le fet vostre auncestre etc.

Denum. Nous grāntoms etc. qe nous vous devons acquiter; mes nous demaundoms jugement, si vivant cely qe tent par la ¹ curteise etc. et qe seisi est de quant qe nostre auncestre aveit, si par son fet devons estre lyé quant a ore ou rien nous est descendu par my cele.

Westcote. Nous demaundoms l'aquitaunce de homage et d'autre service. Et autre ne pouns lier a l'aquitaunce forqe ly, qe put nostre homage receyvre. Mes par my receite de homage nous ne pouns lier autre qe vous. Par qey semble a moi qe vers vous devons ceste aquitaunce demaunder.

Ber. Vous ne poet ly lyer a ceste aquitaunce si noun par un de deux voees, ou pur ceo qe seisi des services ou pur le fet son auncestre. Par seisine des services ne mie, qe le baroun sa miere les tent par la ley d'Engleterre, ne par la fyn sanz ceo qe rien ly seit descendu. Et il tende de averer qe rien ly est descendu. Et pur ceo dites ad il rien par descente de cely par qy fet vous ly volet lier ou noun.

Westcote. Asset, prest etc.

Berr. S'il ² ad par descente, nous agarderoms q'il vous acquite; et s'il n'ad, attendet tant q'il eit.

V. ³

En un bref de meen fut dit qe la ou il tent de ly par certain services pur touz services par les queux services il ly deust acquiter etc., la vint un A. et lui demaunda homage. Et sur ceo mist avant fet etc. Le meen conust le fet et dit qe les services furent en la mayn un tenaunt par la lei d'Engleterre, et demaunda jugement si duraunt l'estat le tenaunt par la ley etc. lui dust il acquiter.

Denom. Desicom vous avez conu le fet vostre auncestre et qe vous estes nostre meen et nous sumes destreint pur vostre homage et c'est un bref de dreit et nous ne pooms aver vers autre nostre acquitaunce, jugement.

¹ The word 'ley' is here inserted in error.

² MS. 'Il.'

³ From *M*.

the law of England, so that we have nothing in the inheritance by descent from our mother. Judgment if you can deraign this acquittance against us as yet.

Westcote. This is the deed of your ancestor etc.

Denham. We grant etc. that we ought to acquit you. But we ask judgment if, in the lifetime of him who holds by the courtesy etc. and is seised of all that our ancestor had, we should as yet be bound by her deed, when nothing has descended from her to us.

Westcote. We ask acquittance of homage and other services. And we cannot bind another person to the acquittance but him only who can receive our homage. But by receipt of homage we cannot bind any other than you. Therefore it seems to me that we should demand this acquittance against you.

BEREFORD, C.J. You cannot bind him to this acquittance, unless in one of two ways, either by the fact that he is seised of your services or by the deed of his ancestor. You cannot bind him by seisin of the services, for the husband of his mother holds them by the law of England. Nor can you bind him by fine, unless assets have descended to him; but he offers to aver that nothing has descended to him. Therefore say whether he has or has not assets by descent from her by whose deed you wish to bind him.

Westcote. He has assets, ready etc.

BEREFORD, C.J. If he has [assets] by descent we will award that he acquit you. If he have not now then wait till he has.

V.

In a writ of mesne it was said that whereas the [tenant in demesne] held of the mesne by certain services for all services, for which certain services the mesne ought to acquit him etc., one A. came and demanded homage from him. Thereupon the [tenant in demesne] put forward a [fine]. The mesne acknowledged [the fine] and said that the services were in the hands of a tenant by the law of England, and asked judgment if during the estate of the tenant by the courtesy, he ought to acquit the tenant in demesne.

Denham. Seeing that you have acknowledged the deed of your ancestor, and that you are our mesne, and that we are distrained for your homage, and seeing that this is a writ of right, and that we cannot have our acquittance against another, we ask judgment.

Ber. Vous dites qe les services sount en la mayn le tenaunt par la lei d'Engleterre, il veot estre allegé tenaunt de temps.

Et fut agardé q'il suyt bref a viscount d'enquere s'il out autre [tenementz] par descende, et si noun q'il attendreit, *non obstante* q'il fut destreint pur son homage.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 109, Warwick.

Roger of Stoke in mercy for several defaults.

The same Roger was summoned to answer the abbot of Redyng on a plea that he acquit him of the service which Guy de Beauchamp earl of Warwick demands from him for his frée tenement which the abbot holds of Roger in Preston¹ whereof Roger who is mesne between them ought to acquit him etc. And whereupon the abbot by his attorney complains that whereas he holds of Roger two virgates of land two mills and four acres of meadow in the aforesaid vill by fealty and the service of sixpence a year for all services, the earl distrains the abbot for homage and scutage etc. that is to say demanding from him five shillings and sixpence of the king's scutage of forty shillings when it shall occur and for more more etc. and for less less etc. for the default of acquittance by Roger etc. Whereupon he says that he is injured and has damage to the value of one hundred marks. And thereof he brings suit etc.²

And Roger by William of Northwyk his attorney comes, and asks that it be shewn to him by what he ought to acquit the abbot etc.

And the abbot says that heretofore in the court of king Edward I. on the octave of the Purification of the Blessed Mary 13 Ed. I. before John de Vaux and his fellows justices in eyre in the county of Wilts a fine³ was levied between Robert then abbot of Redyng the predecessor etc. and a certain Thomas of Etyndone and Isabel his wife the mother of Roger whose heir he is, of this that Thomas and Isabel should acquit Robert the abbot etc. of the service which William de Beauchamp then earl of Warwick demanded from him for the tenements etc.; and by this fine Thomas and Isabel acknowledged the tenements to be the right of Robert the abbot etc. and his

¹ Preston Bagot is in Henley-in-Arden. ² The word 'cras' is here written in the margin of the roll. ³ *Feet of Fines*, Case 244, File 32, No. 9.

BEREFORD, C.J. [He tells you] that the services are in the hands of the tenant by the law of England. He is willing to be alleged tenant thereof at the right time.¹

It was awarded that he sue a writ to the sheriff to enquire whether the mesne had other tenements by descent, and if not that the plaintiff wait notwithstanding that he was distrained for the mesne's homage.

Note from the Record (*continued*).

church, to have and to hold to Robert the abbot and his successors and his church, of Thomas and Isabel and the heirs of Isabel, rendering therefor sixpence a year for all service etc. and that Thomas and Isabel and the heirs of Isabel would warrant etc. and acquit Robert the abbot etc. and his successors and his church against William the earl of Warwick and his heirs and against all others etc. of scutage and all other services etc. And he proffers a part of the fine which witnesses the acquittance in the form aforesaid etc. Whereupon he says that Roger of Stoke by reason of the fine as the heir of Isabel ought now to acquit the abbot etc.

And Roger says that as heir of Isabel etc. he ought not yet to acquit the abbot etc.; for he says that Thomas sometime the husband of Isabel, mother etc. holds the inheritance which belonged to Isabel as well in demesne as in service etc. by the law of England of the inheritance of the same Roger etc. so that he has nothing at present in the service of the abbot for the tenements. And he asks judgment if he ought to be burdened with the acquittance before he has lands and tenements by hereditary descent from Isabel etc.

And the abbot says that Roger has lands and tenements at Cump-ton Skurfen² in the county aforesaid which descended to him from Isabel his mother etc. And this he is ready to aver. And because Roger acknowledges that he is the heir of Isabel his mother etc. it is awarded that he acquit the abbot etc. And the sheriff is ordered that if it be plain to him that Roger has any lands or tenements by descent from Isabel etc. he then distrain Roger to acquit etc.

¹ The purport of this speech is not clear. The translation given above assumes that "vous dîtes" is an error for "il vous dit."

² Compton Scorpion is in the parish of Ilmingdon.

39. ST. JOHN OF JERUSALEM v. STAUNTON.

I.¹

De medio ou acquittance de tens dount n'y ad memorie fut allegé, et l'autre allega interrupcion.

Le prior de Seint Joan de Jerusalem porta bref de men vers Willem de Stanton.

Keng. Jon de Hengham vers qi nous vous devons acquiter est mort. Jugement du bref.

Denom. J. n'est pas partie a nous, par quei par sa mort ne deit nostre bref abatre.²

*Ing.*³ Si J. fut en vie jour du bref purchacé le bref est assez⁴ bon. [Mes autrement serreit s'il fut mort etc., par qey responet outre.]⁵

Kyng. Quei avez de l'acquittance?

Herle. Nous tenoms de vous le maner de Ansti en fee ferme par xx marz par an⁶ par feauté de vous et de voz auncestres, lez queux firent homage a J. de Hengham et a ses auncestres de tens dount il n'ad memorie pur mesme le maner.⁷ Et nous sumes⁸ destreint pur vostre homage, et issi unt voz auncestres acquité⁹ noz auncestres.

*Kyng.*¹⁰ Le quel volez¹¹ vous lyer,¹² par la reseyte dez services, ou pur ceo q'il ad fet homage pur vous? Prenez al un.¹³

Herle. Prenez nostre respons auxi com nous le donoms.¹⁴

Berr. Il dit qe voz¹⁵ auncestres unt fet homage pur mesme le maner de tens dount etc.¹⁶

*Westcot.*¹⁷ Il ne unt nule especiauté pur¹⁸ nous lyer al'acquittance, ne il ne put dire qe nous ly avoms acquité en court qe porte record, ne il¹⁹ demande l'acquittance de mesme lez services qe il nous fet; et demaundoms jugement.

Denom. Il ad dit q'il tent de vous en fe ferme qe de comune²⁰

¹ From *C* collated with *P*, *Q*, *R*. ² *For* par quei . . . abatre *subs.* jugement si par sa mort pussent nostre bref abatre, *R*. ³ *Ing.*, *C*; Hervi, *P*, *Q*, *R*. ⁴ *Om.* assez, *R*. ⁵ *Sic*, *R*; *om.* Mes autre. . . outre, *C*, *P*, *Q*. ⁶ *Ins.* e, *P*, *R*. ⁷ *Sic*, *P*, *Q*, *R*; par mesme la manere, *C*. ⁸ fuissoms, *Q*. ⁹ *Ins.* nous et, *R*. ¹⁰ Kyngeston, *C*. ¹¹ biez, *R*. ¹² *Ins.* a l'aquitaunce, *R*. ¹³ *Ins.* ou l'autre, *R*. ¹⁴ *For* com . . . donoms *subs.* en la manere comme nous le avoms mis avant, *R*. ¹⁵ noz, *C*. ¹⁶ *Add* et ceo tendent de averer, *R*. ¹⁷ Hembr', *R*. ¹⁸ par quey, *P*, *Q*, *R*. ¹⁹ *Ins.* nous, *R*. *Ins.* ne, *P*. ²⁰ *Om.* comune, *R*.

39. ST. JOHN OF JERUSALEM *v.* STAUNTON.

I.

A writ of mesne, where acquittance from a time whereof there was no memory was alleged, and the other side alleged interruption.

The prior of St. John of Jerusalem brought a writ of mesne against William of Stanton.

*Kingeshemed.*¹ John of [Ingham] against whom we should acquit you is dead. We ask judgment of the writ.

Denham. John is not party to our writ. Therefore our writ should not abate by his death.

STANTON, J.² If John were alive on the day when the writ was purchased the writ is good enough. It would be otherwise if he had then been dead. Therefore answer further.

Kingeshemed. What have you of the acquittance?

Herle. We hold of you the manor of Ansty in fee farm by the rent of twenty marks a year and by fealty of you and your ancestors, who did homage for the same manor to John of [Ingham] and his ancestors from a time whereof there is no memory. We are distrained for your homage, and your ancestors have acquitted our ancestors.

Kingeshemed. By which will you bind us? By receipt of the services, or by the fact that he has done homage for you? Betake yourselves to one or the other.

Herle. Take our answer, just as we give it.

BEREFORD, C.J. He says that your ancestors have done homage for the same manor from a time whereof etc.

*Westcote.*³ They have no specialty to bind us to the acquittance, nor can they say that we have acquitted him in a court which bears record, nor do they demand acquittance of the same services as those which they do to us. We ask judgment.

Denham. [We have] said that [we] hold of you in fee farm, which

¹ In *C* this speech is attributed to *Hengham*, who was probably the same person as *Ingham*. Another speech is attributed in *C* to *Kyngeston*, but no such *narrator* is mentioned on the plea rolls, and the name is no doubt an error for *Kingeshemed*.

² In *C* this speech is attributed to *Ing.*, but it is obviously the speech of the judge.

³ In *R* this speech is attributed to *Hembr.*, by whom Henry of Hambury is meant. He also appears in place of *Westcote* in *Y*.

ley¹ ne veot² pas l'aquitance de mesme lez services q'il vous³ fet. Jugement.

*Stanton.*⁴ Il dit q'il est destreint pur vostre homage qe ne put estre fet par⁵ autri persone qe par vous. Et dit outre qe voz auncestres unt acquité ses auncestres de tens etc.

*West.*⁶ Nostre ael fut purchasour de ceste seignurie en tens le roy H. Jugement s'il pusse prescripcion⁷ allegger.

II.⁸

Ou tenancie e aquitance de un des auncestres fut assez bon lien a l'aquitance.

Le priour de Saint Johan de Jerusalem en Engleterre porta sun bref de meen vers W. de C. e dit qe la ou il tient le maner de N. de lui en fee ferme rendant par an xj mars e par homage e escuage etc., la vient Johan de Hengham e lui distreint pur homage etc.

Laufare. Jugement de cestui bref, car nous dioms qe Johan de Hengham est mort. Jugement de cestui bref.

Hunt. Quei nous greve sa mort? Il n'est mie partie a cestui bref, coment qe nous dioms q'il nous distreint. Com jeo vey en bref de garantie de chartre, nent aresteant qe le demandant devie, jeo dereigneray la garantie.

Laufar. Par quei nous volez lier a l'aquitance?

Herle. Nous tenoms de vous le maner de N. en franc ferme, rendant par an ix mars e par homage e escuage. E vous e voz auncestres nous e nos predecessours ont aquité de temps dount memorie ne curt; la vient Johan Hengham e nous distreint pur homage, dount vous lui estes tenuz etc.

S. King. A queux de ces deus volez tenir, ou de ceo qe vous dites qe vous tenez de nous en fee ferme, ou al homage?

Bereford. Il dit q'il est vostre tenant del maner de N. par les services *ut supra*, e vous e vos auncestres etc. de cel homage etc.

Hanber. La ou il bient de nous lier a l'aquitance par especiauté, qe nous e nos auncestres avom aquité eux etc. de cel homage etc.,

¹ *Om.* ley, *P*; *subs.* dreit, *R*. ² doune, *R*. ³ nous, *C*, *P*. ⁴ Stonere,
R. ⁵ pur, *C*. ⁶ Hombr., *R*. ⁷ *Ins.* de temps, *R*. ⁸ From *Y*
(fo. 187 v°).

at common law does not require the acquittance to be of the same services as those which [we] do to you. Judgment.

STANTON, J. He says that he is distrained for your homage which cannot be done by any other person than you. And he says further that your ancestors have acquitted his ancestors from a time, whereof etc.

Westcote.¹ Our grandfather was the purchaser of this seignoury in the time of king Henry. We ask judgment if the plaintiff can allege prescription.

II.

Where tenancy and acquittance by one of the ancestors of the mesne was sufficiently good to bind him to acquittance.

The prior of St. John of Jerusalem in England brought his writ of mesne against W. de C. and said that whereas he held the manor of N. of W. in fee farm rendering eleven marks a year and by homage and escuage etc.,² John of [Ingham] came and distrained the prior for homage etc.

Laufare. We ask judgment of this writ, for we say that John of [Ingham] is dead. Judgment of this writ.

Huntingdon. How does his death harm us? He is not a party to this writ, although we do say that he distrains us. I think that in a writ of warranty of charter, notwithstanding that the demandant die,³ I should deraign the warranty.

Laufare. By what will you bind us to the acquittance?

Herle. We hold the manor of N. of you in [fee] farm by rendering nine marks a year and by homage and escuage. And you and your ancestors have acquitted us and our predecessors, from a time whereof memory runs not. Now John of [Ingham] comes and distrains us for the homage, in which you are bound to him etc.

S. Kingeshemed. To which of these two things will you hold, to your statement that you hold of us in fee farm, or to the homage?

BEREFORD, C.J. He says that he is your tenant of the manor of N. by the services (*above stated*), and that you and your ancestors have acquitted him and his predecessors of that homage etc.

Hambury. They wish to bind us to the acquittance by the specialty that we and our ancestors have acquitted them etc. of

¹ This speech also is attributed to Hambury in *C*.

² This is an error. See the Note from the Record on p. 79.

³ That is to say the lord distraining

for the services. The person bringing a writ of warranty of charter was called the plaintiff, and the person against whom it was brought the disturber or impediēt.

a ceo vous dioms qe un Bertilmeu de C. fut seisi de ces services e granta ces services a une Issoude nostre besaele en temps le rey H. ael le rey etc. Et si vous le volez dedire prest etc. E demandoms jugement, desicom il ne mettount a la court autre especiauté qe prescripcion, si eux aquiter le devoms.

Herle. Conussez qe nous tenoms de vous, e qe vous devez le homage?

Handebir. Nous pledoms a vostre especiauté.

Bere. Devom nous quere du temps qe vostre auncestre purchaca ceux services? Il vous dient qe vous e vos auncestres avez aquité etc. Respondez a ceo, qar jeo pose qe vostre pere ou vostre ael lour eust aquité, par tant si serriez vous lié a l'aquitance del heure q'il tenent de vous?

King. Nous ne nos auncestres unques n'avoms aquité etc. Prest etc.

Et alii contrarium.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 88, Wilts.

William of Staunton was summoned to answer the prior of the hospital of St. John of Jerusalem in England on a plea that he acquit him of the service which John of Ingham demands from him for his free tenement which he holds of William in Anesty,¹ whereof William who is mesne between them ought to acquit him etc. And whereupon the prior by his attorney complains that, whereas he holds of William the manor of Anesty at fee farm etc., to wit, by fealty and the service of nine marks a year for all service John distrains the prior for William's homage by reason of the manor etc. for want of William's acquittance. Whereupon he says that he is injured and has damage to the value of forty pounds. And thereof he produces suit etc.

And William by his attorney comes, and defends the tort and force when etc. And prays that it may be shown to him by what he ought to acquit him etc.

¹ Ansty is seven miles N.W. of Shaftesbury.

that homage etc. To that we tell you that one Bartholomew of C. was seised of these services and granted them to one Iseult our great grandmother in the time of king Henry III., grandfather of the King etc. If you wish to deny it, ready are we etc. And on the ground that they put no other specialty than prescription before the court, we ask judgment if we ought to acquit them.

Herle. Do you acknowledge that we hold of you, and that you owe the homage?

Hambury. We are pleading on your specialty.

BEREFORD, C.J. Ought we then to enquire of the time when your ancestor purchased those services? They tell you that you and your ancestors have acquitted etc. Answer that, for suppose that your father or your grandfather had acquitted them, would you not be bound thereby to the acquittance, seeing that they hold of you?

Kingesheme. Neither we nor our ancestors have ever acquitted etc. Ready are we etc.

And the others to the contrary.

Note from the Record (*continued*).

And the prior says that William is seised of the prior's fealty and service for the tenement etc. and he says that all William's ancestors have always heretofore acquitted the prior and his predecessors of homage, and have done homage to John and his ancestors in acquittance of the prior and his predecessors¹ for the manor etc. And he says that the prior is distrained for William's homage, which homage he cannot nor ought to do for William. Whereupon he asks judgment if William ought not to acquit him in this behalf etc.

And William well denies that either he or his ancestors hitherto have acquitted the prior's predecessors or the prior himself of homage against the ancestors of John of Ingham or against John himself as the prior says. And of this he puts himself upon the country.

Issue is joined and a *uenire facias* awarded here for the quindene of the Holy Trinity.

¹ The roll has 'successorum,' in error for 'predecessorum.'

40. RUNGEFER v. LATIMER.¹

De medio, ou le tenaunt tint del meen ij maneres, e le meen lez tint de ij seygnurs e le tenaunt porta cesti bref e demaunda l'acquitaunce de ambedeux par soun counte. E en soun bref il n'especefia si noun le un maner. E fut chalengée etc.

En² teu cas ou le tenaunt en demene tent deux maners de meen et le men tent l'un maner de un seigneur par un service et l'autre maner de un autre seigneur par autre service, l'un seigneur destreyne le tenaunt en demene pur homage, et il porta son bref de meen. Et le bref voleit 'quod eum de seruiciis etc. de tenementis in Waweston,' et en countant il avoit fet mencioun de tenemenz en W. et en E. Et fut la variaunce chalangé.

Denum. Il semble qe le bref est asset bon, *non obstante* cel chalange, qe si jeo tiegne de vous deux carues de terre en deux countes, si³ n'averay jeo bref forqe des tenemenz⁴ en l'un counté, et ne pur quant en countant⁵ jeo counteray de la une parcele et de l'autre.

*Ston.*⁵ Conusset ma tenaunce solom ceo qe jeo la tynge de l'oure qe jeo suy a dereyner l'aquitance pur mesme la tenaunce. D'autre part nous ne pouns mye fere⁷ mencioun en nostre bref de l'un maner et de l'autre, qe, si nous le feissoms,⁸ nostre meen ne vensit poynt⁹ pur nous acquiter et la proclamacioun fust fait par proces en counté ver ly, si serreit l'agarde tiel qe nous attornames¹⁰ au seigneur destreynant de nostre tenaunce, et ensi acrestereit al un seigneur¹¹ de autri fee, *quod esset inconueniens*.

Berr. Vostre maxime est faux¹² quant vous dites qe vous attornerez au seigneur destreinant,¹³ qe *posito* qe le quinte au¹⁴ ou le¹⁵ dime le¹⁶ seigneur, de qe la terre est tenux par amount destreyndereit le tenaunt en demene, il s'atornerait au seigneur destreinant; et¹⁷ quant vous dites qe acrestereyt etc. vous dites mal, qar¹⁸ il ne se attournera pas forqe de ces services qe son meen soleit fere, dount si nul autre service soit reservé au mèn, qe seit¹⁹ ces²⁰ terres ou tenemenz qe²¹ il²² tent¹⁹ en

¹ From *R* collated with *C*, *P*, and as to part with *Q*. The folio in *Q* on which the first three paragraphs are written is missing. The headnote is from *P*.

² The first paragraph is stated more briefly in *C* and *P*. ³ *Om.* si, *C*, *P*.

⁴ *Om.* des tenemenz, *C*, *P*. ⁵ *Om.* en countant, *C*, *P*. ⁶ *Ins.* ad idem, *C*, *P*.

⁷ *For* nous . . . fere *subs.* si nous feissoms, *C*, *P*. ⁸ *Om.* qe . . . feissoms, *C*, *P*. *Ins.* et, *C*, *P*. ⁹ *Ins.* en court, *C*, *P*. ¹⁰ tournassoms, *C*, *P*.

¹¹ *Ins.* etc., *C*. ¹² *Om.* est faux, *R*. ¹³ *Ins.* et issi accrestreit etc., *C*, *P*.

¹⁴ *Ins.* au, *R*. ¹⁵ *Om.* quinte . . . le, *C*, *P*. ¹⁶ *Ins.* le, *R*. ¹⁷ *Om.* et, *P*, *Q*.

¹⁸ *Om.* quant vous . . . mal, qar il, *C*, *P*, *Q*. *Ins.* ne pur quant, *C*. ¹⁹ sunt, *C*, sount, *P*, *Q*. ²⁰ des, *C*, *P*, *Q*. ²¹ *Om.* qe, *R*. ²² *Om.* il, *C*, *P*, *Q*.

40. RUNGEFER *v.* LATIMER.¹

Writ of mesne, where the tenant held of the mesne two manors, and the mesne held them of two lords. The tenant brought this writ, and by his count he demanded acquittance of both manors. In his writ he specified one manor only, and the writ was challenged.

In a case where the tenant in demesne held two manors, of a mesne, and the mesne held one manor of one lord by one service and the other manor of another lord by other service the lord distrained the tenant in demesne for homage; and the latter brought his writ of mesne. And the writ ran 'that he should acquit him of the services etc. from the tenements in [Wyboston],' and in counting he made mention of tenements in [Wyboston] and in [Eaton]. The variance was challenged.

Denham. It seems that the writ is good enough notwithstanding the challenge, for if I hold of you two carucates of land in two counties, should I not have my writ of the tenements in one county only, and yet in counting I should count of both parcels.

Stonore [on the same side]. Acknowledge my tenancy as I hold it, seeing that I sue to deraign the acquittance for the same tenancy. Besides we cannot mention both manors in our writ, for if we did so [and] our mesne did not come into court to acquit us and proclamation were made against him by process in the county, then the award would be that we attorn to the lord distraining on our tenancy, and so there would be an accrual to one lord etc. from the fee of another, which would be improper.

BEREFORD, C.J. When you say that you would attorn to the lord distraining, your maxim is false. For suppose the fifth or the tenth lord upwards, of whom the land is held, were to distrain the tenant in demesne the latter would attorn to the lord distraining. And when you say that there would accrue etc. you are wrong, for he would attorn for the services only which the mesne was wont to do. Wherefore if any other service were reserved to the mesne from lands and tenements, which he held in the fee of another, notwith-

¹ This case was first heard in Mich. term, 4 Edw. II., and this is the report of the arguments on an adjournment. For reports of the arguments in Mich.

term and the record see vol. iv. pp. 130-135. It will be noticed that in this report no speeches are attributed to counsel for the mesne.

autri fee¹ *non obstante* etc. il n'est forjugé si noun des services qe un seignur ly demaunde.²

Denum. Nous sumes en cas ou le seignur destreynt le tenaunt en demene, par qey s'il ust nomé les tenemenz en une ville et ust fet son counte accordaunt, dounqe ne ust il dereyné l'aquitaunce forge de l'un, ou il ne put pas dire q'il tint de ly le un maner par tiels services la ou il tent les deux, qe par taunt chargereit il sa tenaunce.

[*Denom.*³ Nous sumes ore destreint par un seignur, dount si nous eussoms counté accordant a nostre bref, donqe ne⁴ eussoms desrenée l'aquitaunce fors en une ville. Et si nous eussoms counté qe nous tenissoms de ly le un maner par ceux services la ou il tent lez ij, issi chargereit il sa tenance.]

Ston. Sire, le meen pout aver respoundu issi⁵ qe nous n'ussoms mie dereyné l'aquitaunce⁶ vers ly, q'il pout aver dit qe des services qe sont demaunde en W. 'nent destreint par nostre defaute'; et quant a les tenemenz en E. 'il ad mie⁷ fet menciouun'; et ensi ne recovereit il l'un ne l'autre.⁸

Berr. Vous dites mal q'il n'ust pas esté resceu a dire qe 'nent destreint par sa defaute,' einz ceo q'il ust entré en l'aquitaunce et ensi l'aquitaunce dereyné.⁹

Hervi. Par cesti bref vous biet a recoverir l'aquitaunce de un maner et par counte¹⁰ de deux maners,¹¹ dount desicom le bref n'est pas garaunt ne le bref ne nous put garaunter¹² au tenir ceu plai¹³ de aquitaunce des¹⁴ services des tenemenz en E, si covent qe vous eiez autre bref.

¹ *Ins.* de ceux n'est il pas forjugé, *P, Sim., C, Q.* ² *Om.* non obstante . . . ly demaunde, *C, P, Q.* ³ This paragraph, in substitution for the preceding, is from *C* collated with *P, Q.* ⁴ *Om.* ne; *ins.* nous, *P, Q.* ⁵ *Om.* issi, *C, P, Q.* ⁶ *Ins.* fors del un, *C, P, Q.* ⁷ mesme, *Q.* ⁸ *For* il . . . l'autre *subs.* mes l'un, *C, P, Q.* ⁹ *For* par sa . . . dereyné *subs.* sanz conustre l'aquitaunce, *Q.* ¹⁰ *Om.* de un . . . counte, *C, P, Q.* ¹¹ *Om.* maners, *R.* ¹² *Om.* nel e . . . garaunter, *P.* ¹³ *For* au . . . plai *subs.* a ceo ple, *C, P, Q.* ¹⁴ en, *P, Q.*

standing etc. the mesne is deprived only of the services which the one lord demands of him.

Denham. We are in the case where the lord distrains the tenant in demesne. Therefore if [we] had named the tenements in one vill, and had made [our] count accordingly, [we] should have deraigned the acquittance of one vill only, whereas [we] could not say that [we] held of him the one manor by such services when [we] held the two thereby, for so [we] should charge [our] tenancy.

[*Denham.*¹ We are now distrained by one lord. If we had counted according to our writ, we should have deraigned the acquittance in one vill only. And if we had counted that we held one manor of him by these services, where we held two, we should thereby charge our tenancy.]

Stonore [on the same side]. Sir, the mesne could have answered in such a way that we could not have deraigned the acquittance against him; for he could have said of the services which are demanded in W. 'not distrained by our default.' And as to the other tenements in E. '[the plaintiff] has not mentioned them,' and so [we] would recover neither acquittance.

BEREFORD, C.J. You are wrong, for he would not have been received to say 'not distrained by his default' until he had entered into acquittance; and so the acquittance would have been deraigned.

STANTON, J. By this writ you wish to recover the acquittance of one manor and by your count the acquittance of two manors, therefore inasmuch as your writ is no warrant, and cannot be a warrant for us to hold this plea of acquittance of the services from the tenements in E., you must have another writ.

¹ See note 3 on opposite page.

41. HEYFORD v. COOPER.

I.¹

Ou la femele clama encontre le madle par mesme la descente e fust resceu.

Un Thomas de Heyford porta sun bref de mortdancestre de la mort Robert sun uncle vers Jordan le Coupere e Johane sa femme devan Sire Henri Spigurnel e ses compaignons en le conté de Warrewyke.

Walinford. Luce respond e dist, ele entra en ses tenemenz apres la mort W. sun uncle come cosin e heir e cleime par mesme la descente. Jugement de cestui bref.

Stonouer. Nous dioms qe A. est fiz T. frere eygné e Luce si est fille P. frere pusné, e fille est de meinz digne saunk, *quia* femele, qe n'est maal. Jugement, si ele encontre nous qe sumes plus digne puisse² clamer.

Walinford. Nous entrames com cosin e heir apres la mort nostre uncle e avom continué cele seisine par x aunz e plus sanz estre reclamé. Jugement, si nous etc.

Spigurnel. Est Luce la fille le frere pusné W. ?

Stonouer. Nous ne pooms dedire.

Spigurnel. Ou est il cestui A. ?

Stonouer. Veez le cy. E apparust homme *quinquaginta annorum*.

Spigurnel. Si le clamer ne soit resceu en ceo cas, jeo ne say ou il serreit resceu. Et pur ceo gaitez voz jours a Westmustre devant justices en banke a x^{me} de saint Hillaire.

E le cas fust qe li avoint iij freres Thomas, Willem e Johan. Willem le frere mulveyn purchasa ses tenemenz e devia sanz heir. Meintenant apres sa mort, Luce fille Jon frere pusné entra. Adam le fiz Thomas le frere eygné porta ceste assise. Le record vient en baunke.

Hervy demanda les parties e dist:—Nous trovoms cy par record qe Adam autrefoiz granta qe Luce est fille Johan frere W. de qi mort etc. Est ceo issi ou non ?

¹ From Y (fo. 58 r^o). ² MS. 'puisseez.'

41. HEYFORD *v.* COOPER.I.¹

Where the female claimed against the male by the same descent, and was received.

One Thomas of Heyford brought his writ of mortdancestor on the death of Robert his uncle against Jordan le Coupere and Joan his wife before Sir Henry Spigurnel and his [fellow justice] in the county of Warwick.

Wallingford. [Joan] answers and says that she entered into these tenements after the death of [Robert] her uncle as cousin and heiress, and she claims by the same descent. Judgment of this writ.

Stonore. We say that [Thomas] is the son of [William] the elder brother and [Joan] is the daughter of [Thomas] the younger brother, and a daughter is of less worthy blood, as being female, than a male. We ask judgment, if she can claim against us who are of more worthy blood.

Wallingford. We entered as cousin and heir after the death of our uncle, and have continued that seisin for ten years and more without its being challenged. Judgement if we etc.

SPIGURNEL, J. Is [Joan] the daughter of the younger brother of [Robert] ?

Stonore. We cannot deny it.

SPIGURNEL, J. Where is this [Thomas] ?

Stonore. See, here he is ! (and a man fifty years of age appeared.)

SPIGURNEL, J. If the claim [by the same descent] be not received in this case, I do not know in what case it would be received. Therefore await a day at Westminster before the justices of the bench on the quindene of St. Hilary.

And the case was that there were three brothers [William, Robert and Thomas. Robert] the middle brother purchased these tenements and died without an heir of his body. Immediately after his death, [Joan] the daughter of [Thomas] the younger brother entered. [Thomas] the son of [William] the elder brother brought this assise. The record came into the bench.

STANTON, J. demanded the parties and said—We find here by record that [Thomas] heretofore admitted that [Joan] is the daughter of [Thomas] the brother of [Robert] of whose death etc. Is this so or is it not ?

¹ In this report the proper names are corrected by the record.

Stonouer. Nous nel pooms dedire.

Herry. Si agarde la court qe Luce va adieu sanz jour e Adam pur etc. en la merci.

Ber. dixit postea :—si le tenant eust granté al demandant ceo qe le demandant ad a tenant, *scilicet* q'il fust fiz le frere eygné, il ne avereit autre mestier mes quere de damages.

Westcote. Sire, vous dites verité, la chose fust meinz bien manié.

II.¹

Mortdauncestre ou la fille le frere puisné clama par mesme la descente encontre le filz frere einsné.

Le filz al frere mulieré² porta son bref de mordauncestre vers la fille le frere puisné³ de la mort son uncle, le frere einsné; ou le tenaunt vint et dit qe apres la mort celui de qi etc. si entra un C. com frere et heir, out, et tient etc. et morust seisi. Apres qi mort ele est entré com fille et heir, et cleyme par mesme la descente. Et demaundé fut de court si lour deux pieres furent d'une ventre. Et dit fut qe oyl. Par quey fut agardé, q'il ne preist rien par son bref etc.

III.⁴

Mort dancestre. Femme clama contre mal.

A. de B. porta mortdauncestre de la mort son uncle frer son pere vers une Alice, qe dist qe apres la mort l'auncestre entra T. com frer et heir et murust seisi, apres qi mort Alice entra com fille et heir et cleime par mesme la descente. Fu demaundé si lour pers furent de enter sank. Fu dit qe oil. Ideo le bref abati.

Notes from the Record.

I.

Assize Rolls, No. 1350, r. 8, Warwick.

An assize came to make recognition if Robert of Heyford uncle of Thomas of Heyford of Rodburne was seised in his demesne as of fee of one messuage nine acres and three roods and one rood of meadow in Rodburne on the day on which he died. And if etc. And if etc.

¹ From *T* collated with *A* and *D*.

³ *Ins.* et. *A*, *D*.

² mulveyne, *A*, muleré, *D*.

⁴ From *X*.

Stonore. We cannot deny it.

STANTON, J. Then the court awards that [Joan] go adieu without day and [Thomas] for his false claim be in mercy.

BEREFORD, C.J. said afterwards that if the tenant had granted to the demandant what the demandant had granted to the tenant, that is to say that he was the son of the elder brother, the demandant would only have had to ask for damages.

Westcote. Sire, you speak the truth; the case was not well managed.

II.

Mortdancestor where the daughter of a younger brother claimed by the same descent against the son of an elder brother.

The son of a [middle¹] brother brought his writ of mortdancestor against the daughter of a younger brother on the death of his uncle, the eldest brother. The tenant came and said that after the death of him, of whom etc. one C. entered as brother² and heir, and he had and he held [the tenements] etc. and died seised. After his death [the lady] entered as daughter and heiress, and she claim[ed] by the same descent. The court asked if their two fathers were of one venter and the answer was, Yes. Wherefore it was awarded that the demandant take nothing by his writ etc.

III.

Mortdancestor. A woman claimed against a man.

A. of B. brought a writ of mortdancestor on the death of his uncle, the brother of his father, against one Alice, who said that after the death of the ancestor [one] T.³ entered as brother and heir and died seised; after whose death Alice entered as daughter and heir, and claims to hold by the same descent. The court asked if their fathers were of the whole blood, and the answer was, Yes. Therefore the writ abated.

Notes from the Record (*continued*).

Afterwards he asks licence to withdraw from his writ, and he has it because it errs in form.⁴

¹ The French word is 'mulieré,' meaning legitimate, but 'mulveyne,' which occurs in one of the reports, seems to be the true reading. The ancestor in this case was really the middle brother; and the demandant was the son of the eldest brother.

² This is incorrect. The record shows that the ancestor's niece entered on his death.

³ See note ² above.

⁴ Apparently the writ was defective because it omitted to state the nature of the nine acres and three roods.

Notes from the Record (*continued*).

II.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 150, Warwick.

An assize heretofore before Henry Spygurnel and Miles of Rodberwe, justices assigned for taking assizes in the county aforesaid on [11 January 1319] the Monday next after the Epiphany at Warwick 4 Ed. II. came to make recognition if Robert of Heyford uncle of Thomas of Heyford of Rodburn was seised in his demesne as of fee of one messuage nine acres and three roods of land and one rood of meadow in Rodburn on the day when he died, and if etc. which Jordan le Coupere and Joan his wife hold, etc.

And Jordan and Joan come and well acknowledge that Robert of Heyford the uncle of Thomas died seised of the tenements in his demesne as of fee, but they said that the assize thereof between them ought not to be made, because they said that Robert died seised thereof without an heir of his body (*de se*) etc. after whose death Joan as daughter of one Thomas of Heyford brother of Robert of the same father and mother entered the tenements as cousin and next heiress of Robert and thereof was seised, and she claims the tenements by the same descent etc. And she asks judgment if an assize thereof between them ought to be made.

And Thomas said that Robert of Heyford of whose death etc. had two brothers of the same father and mother, to wit, one William of Heyford the

42. LATYMER *v.* FOXTON.

I.¹ Thomas le Latimer et Alice le Latimer parceners porterent lour bref de naifté. Thomas fut noun sywy. Alice vynt par attorné. Par qey fut agardé qe le defendant alast sanz jour et qe Thomas et Alice ne preissent rien par lour bref et Thomas et ses pleges en la mercy.

II.² Thomas le Latymer et Alice sa femme porterent bref de neyfeté. Alice apparut et Thomas ne sewit pas. Par quei fut agardé, q'il³ alast⁴ sanz jour et Thomas in misericordia.

III.⁵ Deux parceners porterent lour bref de neiveté, dount l'un fust noun siwy. Par ount fust agardé q'il ne preissent rien par lour bref, et l'autre alast adieu sauntz jour etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 51d, Leicester.

Roger the son of master William of Foxton offered himself the fourth day against Alice la Latymer and Thomas le Latymer of a plea of naifty, whereupon they implead him etc. And they do not come and they were

¹ From *R.* ² From *C* collated with *P* and *Q.* ³ *qi*, *C.* ⁴ *Om.* alast, *P.*
⁵ From *A* collated with *D* and *T.*

Notes from the Record (*continued*).

father of Thomas now demandant the elder, and one Thomas the father of Joan the tenant the younger, and he said that since Joan is the daughter of Thomas the younger brother, and Thomas who now demands is the son of William the elder brother and is more worthy in blood than Joan, the same Joan cannot claim the tenements against him by the same descent. And he asked judgment etc.

And Jordan and Joan said that since Thomas cannot deny that Joan after the death of Robert her uncle etc. entered the tenements as cousin and heiress etc. and thereof is seised, claiming them by the same descent by which Thomas now claims them etc. he asked judgment if the assize thereof ought to be made between them etc. A day was given them here at this day to wit the morrow of the Purification of the Blessed Mary. And Thomas of Heyford put in his place Thomas of Solihull. And Jordan and Joan put in their place John of Ichyngton in the plea aforesaid.

And now came the parties by their attorneys and Thomas is asked by the justices if William of Heyford the father of Thomas and Thomas of Heyford the father of Joan were brothers of Robert the uncle etc. of the same father and mother etc. and says yes. Therefore it is awarded that Jordan and Joan go thereof without day and that Thomas take nothing by this writ, but be in mercy for a false claim etc.

42. LATYMER *v.* FOXTON.¹

I. Thomas le Latymer and Alice le Latimer, parceners, brought their writ of naifty. Thomas was non-suited. Alice came by her attorney. Therefore it was awarded that the defendant go without day and that Thomas and Alice take nothing by their writ and that Thomas and his pledges be in mercy.

II. Thomas le Latimer and Alice his wife brought a writ of naifty. Alice appeared and Thomas did not sue. Therefore it was awarded that the defendant go without day and that Thomas be in mercy.

III. Two parceners brought their writ of naifty whereupon one was non-suited. Therefore it was awarded that they take nothing by their writ and that the defendant go Adieu without day etc.

Note from the Record (*continued*).

demandants etc. Therefore let Roger go thereof without day etc. and Alice and Thomas and their pledges of suing, to wit Roger le Clerke of Foxton and Richard of Thorpe of the same place etc. be in mercy.

¹ This is Fitz., *Nonsuit*, fo. 124, No. 29, and also *Severans*, fo. 111, No. 24. It should be noticed that the record is silent about the appearance of the demandant Alice.

43. FERLINGTON *v.* FLEMING.I.¹

(¹) Assise novel disseisine ou le tenaunt mist avaunt reles et quitecleime de pleintif. E le pleintif conust bien le fet mes il dit qe le fet fust fest sur tiel condicioun qe si il paiast etc. qe la quitecleim fut nule. Et pus accorderent. Et fust dit par Sire Hervi qe s'il eussent pledez, la ley ne avereit ² mie pur le pleintif etc.

(²) Ou le tenant avoit estat par escrit condicional et mit avaunt une quitecleime qe fut fet en sa seisine simple, qe li fut fet pur enfurer ³ son terme la quele quitecleime simple il mist avaunt en barre d'assise; ou le pleintif conust le fet et dit q'il fut livré a ly sur condicioun et il fut prest a performier etc. et le tenaunt se aloigna et ne voleit pas les condicioun tenir; par quei le pleintif entra solom le purport sun escrit condicional, qe fut mys avaunt de part le pleintif et seisi fut tanqe par le tenant desseisi.

Sire Johan Flemyng porta une assise de novele disseisine vers Nichole Flemynge et Alice sa femme et plusours autres etc. Touz les autres ⁴ forspris N. et A. disoient qe rien n'avoient ne ren ne clamerent ne nul tort ne disseisine avoient fait, prest par assise etc. N. et A. sa femme respondirent come tenauntz et dysoient qe assise ne duist estre, qe veietz cy soun fait demene en nostre seisine fait. Et myst avaunt la quitecleime J. de F. et demaunda jugement, si encountre soun fait demene poeit al assise atteindre.

Migg. Nous conissons bien le fait, mais vous nous dyoms qe la quitecleime lour fuist livré sour ⁵ condicioun, issint qe sy nous lui paiassoms xl livres et un escripte obligatoire de C. livres le jour de seint Martyn en la eglise des Freres Menours d'Everwike qe la quitecleime fuist nule. A quel jour nous venismes et paiames les xl livres a mesme cestui N. et prest sumes ⁶ a rendre l'escripte de C. livres *ut supra*, et il nel voilleit receivre. Jugement, desicome nos esteimes prest a parfournir ⁷ le covenaut a mesme le jour et lieu, si par ceo doyve de ⁸ l'assise estre barré.

Pass. Quei avietz vous du covenaut?

Herle. Veietz cy vostre fait demene. Et fuist le fait luwé qe voilleit le covenaut *ut supra*, et plus, qe s'il fuist prest a tenir le covenant mesme le jour et lieu q'il prendroit tesmoigne de iiij des

¹ From *B* collated with *G*. The first headnote is from *B* and the second from *G*.

² Perhaps an error for 'serveroit.'

³ Perhaps an error for 'ensurer.'

⁴ *Om.* etc. . . . autres, *G*.

⁵ *su*, *G*.

⁶ fumes, *G*.

⁷ performer, *G*.

⁸ *Om.* de, *G*.

43. FERLINGTON *v.* FLEMING.¹

I.

(¹) Assize of novel disseisin in which the tenant produced a release and quitclaim by the plaintiff, who acknowledged the deed, but said that the deed was made upon condition that if he made a certain payment the quitclaim should be void. Afterwards the case was settled. Sir Hervey of Stanton said that if they had pleaded, the law would not have been on the side of the plaintiff.

(²) A case in which the tenant had an estate by a conditional writing, and put forward an unconditional quitclaim made when he was seised, and to ensure his term to him; he put forward this quitclaim in bar of the assize. The plaintiff acknowledged the deed and said that it was delivered to him on condition, and that he was ready to perform, etc. The tenant withdrew from it and would not hold to the conditions. Thereupon the plaintiff entered according to the purport of his conditional writing, which was produced on his behalf and was seised until he was disseised by the tenant.

Sir John [of Ferlington] brought an assize of novel disseisin against Nicholas Fleming and [Ellen] his wife and many others etc. All the others except Nicholas and [Ellen] said that they had nothing and claimed nothing [in the tenements], and that neither tort nor disseisin had they done and that they were ready to aver this by the assize etc. Nicholas and [Ellen] his wife answered as tenants and said that assize there ought not to be:—for, see here his own deed made when the tenements were in our seisin. (They then put forward the quitclaim of John of Ferlington and asked judgment if he could against his own deed come to the assize.)

Miggeley. We acknowledge the deed, but we tell you that the quitclaim was delivered to them upon condition, to wit, that if we paid to [Nicholas] forty pounds and [delivered to him] a writing obligatory for one hundred pounds on the day of St. Martin in the church of the Friars Minor at York, then the quitclaim should be null. At that day we came and paid the forty pounds to this same Nicholas, and ready [were] we to render to him the writing for one hundred pounds (as stated above) and he would not receive them. As we were ready to perform the covenant on the very day and at the very place, we ask judgment if the assize ought to be barred by this exception.

Passeley. What have you of the covenant?

Herle. See here your own deed. (The deed was read, and it declared the covenant, *as stated above*, and further, that, if he were ready to hold to the covenant on the same day and at the same place, he

¹ This case is Fitz. *Reless*, fo. 73, No. 50. It appears in the Old Edition on p. 95.

meilloirz gentz en mesme la ville et puis lirreit a lui entrer mesme les tenemenz saunz nule countredit de N. des ¹ heirs ou des ¹ assignez, par vertue de quel fait nous entrames et seisi esteimes tauntqe N. et A. nous ousterent etc. Et prioms l'assise.

Malm. Un James Flemyng fust seisi et nous dona.

Herle. Nous sumes al assise; q'il dient qe James lour dona, en tant supposent il ² mye estre entré en ceux tenemenz ³ par disseisine; et nous dyoms q'il nous disseisirent; et issint sumes nous a travers, et prioms l'assise.

Scrop. La quitecleime qe nous avoms mis avaunt est symple en sey. Jugement si par my nul fait costeyn encountre lour fait q'est pure en sey, puisse al assise atteindre.

Herle. Pledetz vous al autre couste.⁴

Berr. Aletz hors, et seietz a un quel respounse vous voilletz doner. Il isserent et revyndrent.⁵

Malm. Sire, veietz ici la quitecleime par my la quele fee et droit passa hors de sa persone, et vesti en nostre persone. Jugement s'il deive a nul assise atteindre saunz ceo q'il puisse moustrer fait par le quele fee et droit ou possessioun li soit acru puis.

Migg. Nous avoms dit qe covenant se prist entre nous qe si nous paiassoms etc. *ut supra*. Et nous paiames etc. et prest sumes a delyverer l'escript etc. la quele chose nous voloms averrer si vous le voilletz dedire. Et fee ne les puist acrestre sy noun par le freindre du covenant pur ceo qe la quitecleime fuist livré sour ⁶ covenant. Jugement.

Ber. Si cele aquitaunce fuist livré sour ⁶ tiele condicioun cest moult.

Herle. Nous le voloms averrer.

Malm. Depuis qe nous mettoms avaunt la quitecleime symple par la quele droit est esteint en vostre persone,⁷ et acru en nostre persone, et il ne moustra ⁸ mye q'il avoit puis possessioun, saunz quele possessioun le droit ne poeit revenir en lour persone, jugement si assise doyve estre.

Et puis acorderent; et Jon luy fit une aquitaunce ⁹ e resceut par ¹⁰ accorder C. mars. Et vindrent en baunc et fuist l'aquitaunce mys avaunt et conu de partie.

Hervi. Si agarde la court qe Jon ne preigne rien par soun bref, einz soit en la merci et A. et N. a dieu saunz jour, etc.

¹ ces, *G.* ² *Ins.* ne, *G.* ³ *Om.* en ceux tenemenz, *G.* ⁴ coste, *G.*
⁵ remeyndrent, *G.* ⁶ su, *G.* ⁷ The word 'jugement' is here inserted in error, both in *B* and *G.* ⁸ must'r', *G.* ⁹ quit, *G.* ¹⁰ pur, *G.*

should take four of the best people in the same town as witnesses and that it should then be lawful for him to enter the same tenements without any contradiction by Nicholas his heirs or assigns.) By virtue of this deed we entered and were seised until Nicholas and [Ellen] ousted us. We pray the assize.

Malberthorpe. One James Fleming was seised and gave the tenements to us.

Herle. We are at the assize; for they say that James gave them the tenements, and thereby they suppose that they did not enter therein by disseisin, and we say that they disseised us. So we are at issue, and we pray the assize.

Scrope. The quitclaim, which we have put forward, is in itself unconditional. We ask judgment if by any collateral deed against this their own unconditional deed they can come to the assize.

Herle. Do you plead on this other collateral deed?

BEREFORD, C.J. Go outside and be at one as to what answer you will give. (They went outside and returned.)

Malberthorpe. Sir, see here the quitclaim by which fee and right passed out of his person and vested in our person. We ask judgment if he ought to come to the assize unless he can show a deed by which fee and right or possession has since accrued to him.

Miggeley. We have said that a covenant was made between us that if we paid etc. (*as above stated*). We did pay etc. and we are ready to deliver the writing etc. And this we wish to aver, if you wish to deny it. Nor can fee accrue to them except by the breach of the covenant, for the quitclaim was delivered to them upon covenant. Judgment.

BEREFORD, C.J. If the quitclaim were delivered upon such a condition as that, it is important.

Herle. We will aver it.

Malberthorpe. Since we put forward the unconditional quitclaim, by which the right is extinguished in [his] person, and has accrued to our person, and since he does not show that he had possession afterwards without which the right cannot return to [his] person, we ask judgment if assize there ought to be.

And afterwards they were agreed; and John made a quitclaim to him and received one hundred marks for the agreement; then they came in to the bench and the acquittance was produced, and acknowledged by the party [who made it].

STANTON, J. The court awards that John take nothing by his writ, but be in mercy, and let Nicholas and [Ellen] go adieu without day etc.

Hervi. Bien¹ moy est, si vous estes acordé qe la court est deliveres de graunt barreit, qar loialment coment qe vous avietz la bone foi pur vous, lei de terre ne vous oût pas servi. Et pur ceo Johan qaunt vous autrefoith lessetz vos terres, mettez vos covenantz touz en un escripte si vous voilletz bien faire etc.

II.²

Novel disseisine ou le tenaunt mist avant le reles le pleyntif, ou dit fut qe cel reles ne devoit nuyre.

Jon de Frelington porta une assise de novel disseisine vers Nichol de F. et E. sa femme et se pleynt estre disseisi de certeynz tenemenz.³

Pass. Assise ne deit estre qe les tenemenz furent en askun temps⁴ en la seisine Jakes de F. et E. sa femme, les quex donerent mesme les tenemenz a Nichole et E. sa femme et a les heirs Nichole. Pus vint cesti Jon et mist debat en ceux tenemenz, par qey Nichol parla tant ove ly qe illi relessa et quitecleima en sa seisine par ceo fet. Jugement si assise deive estre.

Herle. Covenant se prist entre cesti Jon et Nichole⁵ qe si Jon ly payast certeyn jour et leu xl marcz et ly liverast un escrist obligatore de C. livres adonqe serreit la quiteclaime de nule force et⁶ a nous lierreit de entrer mesme les tenemenz. A quel jour nous ly payames les xl livres et il les emporta⁷ et prest fumes⁸ a deliverer l'escrit, et prest sumes uncore. Et veez issi soun fet qe ceo testmoigne.

*Pass.*⁹ Nous avoms mis avant vostre fet en barre, seoms a un si ceo seit vostre fet ou noun.

Pass. Jakes nous enfeffa etc. et pus vous en nostre seisine relessastes etc. Jugement etc.

Herle. Tant amounte qe vous n'entrastes pas par disseisine eintz par feffement et nous voloms averer par disseisine.¹⁰ Et prioms l'assise.

Malm. A l'assise ne devez avenir, qar vous mesme en nostre seisine relessastes etc. Jugement si a l'assise etc.¹¹

¹ Beau, G. ² From *R* collated with *C*, *P*, *Q*. The headnote is from *C*.
³ *Om.* et se . . . tenemenz, *C*, *P*, *Q*. ⁴ *Om.* en askun temps, *C*, *P*, *Q*. ⁵ *For* Nichol parla . . . et Nichole *subs.* il pus relessa et quiteclama en la seisine cesti Nichole issi, *C*, *Sim.*, *P*, *Q*. ⁶ *Ins.* qe ben, *C*, *P*, *Q*. ⁷ *Om.* et il les emporta, *C*, *P*, *Q*. ⁸ *sic* *C*, *Q*, sumes *P*, *Q*. ⁹ *For* this and following speech *subs.* Jakes nous enfeffa e puis en nostre seisine vous relessatz e nous en bare mettons avant le fet, par quei seoms a un du fet, *P*, *Sim.*, *C*, *Q*. ¹⁰ *Om.* eintz . . . disseisin, *C*, *P*, *Q*. ¹¹ *For* qar vous . . . l'assise etc. *subs.* encountre le reles, *C*, *P*, *Q*.

STANTON, J. Well it is for me that you are agreed, for the court is relieved of much trouble, for in justice, although you have good faith on your side, the law of the land would have served you nought. Therefore, John, next time you demise your lands you will do well to put all your covenants in one writing.

II.

Novel disseisin. The tenant put forward a release by the plaintiff, who said that that release ought not to harm him.

John of Ferlington brought an assize of novel disseisin against Nicholas Fleming and Ellen his wife and complained that he was disseised of certain tenements.

Passeley. Assize there ought not to be, for the tenements were sometime in the seisin of James Fleming and E. his wife,¹ who gave the same to Nicholas and Ellen his wife and the heirs of Nicholas. Then came this John and raised a controversy about these tenements, on which Nicholas spoke so much with John, that John by this deed released and quitclaimed these tenements to Nicholas while they were in the seisin of Nicholas. We ask judgment if assize there ought to be.

Herle. An agreement was made between this John and Nicholas, that if John paid to him forty [pounds] on a certain day and at a certain place, and also delivered to him a writing obligatory for one hundred pounds, then the quitclaim should be of no force and it should be lawful for [John] to enter the same tenements. At the day appointed [John] paid him the forty pounds, and Nicholas took them; and John was ready to deliver the writing, and is still ready. See here Nicholas's deed which witnesses the agreement.

*Passeley.*² James enfeoffed us, and then while we were seised you released to us. We have put forward your deed as a bar. Let us be at one if it is or is not your deed.

Herle. Your answer amounts to this, that you did not enter by disseisin, but by feoffment, and we wish to aver that it was by disseisin, and pray the assize.

Malberthorpe. To the assize you ought not to come, for you yourself released etc. to us when we were seised. Judgment if to the assize etc.

¹ The wife of James Fleming is not mentioned in the record. speeches attributed to Passeley in the French text opposite have been combined.

² In this translation the two

Migg. La quiteclaim¹ fut liveré solom la purport de ceste covenant² qe nous avoms mis avant³ qe est vostre fet; le quel covenant nous avoms perempli⁴ en toux poyntz solom ceo qe nous voloms averer. Et prioms qe vous responez a ceo fet.

Malm. Nous avoms dit qe en nostre seisine releessates etc. par quel etc. relees⁵ le dreit est esteynt en vostre persone, et vous ne poet mostrer qe pus cel temps estat vous seit acreu en le dreit ne en la possession. Jugement si assise deive estre.

*Hertep.*⁶ Nous avoms dit qe covenant se prist entre nous qe si nous vous païames⁷ les xl livres et ly liverassoms l'escrit de C. livres etc.; et nous les xl livres païames a jour⁸ et prest sumes⁹ deliverer l'escrit de C. livres¹⁰ les quex choses nous voloms averer s'il le dedirent. Et fee ne les put acrestre si noun par¹¹ le covenant¹² pur ceo qe la quitecleime fut liveré sur¹¹ le covenant. Jugement.

Berr. Si la quiteclaime fut liveré sur¹¹ le condicioun¹³ ele est nule.¹⁴

Herle. Nous le voloms averer.

Malm. Depus qe nous mettoms avant la quiteclaime simple par la quele le dreit purement se esteint en vous et a nous acrest,¹⁵ et il ne mostre mye q'il avoit pus possessioun sanz quele possessioun¹⁶ le dreit ne poet revenir, demaundoms jugement si l'assise deive estre.

III.¹⁷

Novele disseisine ou encountre quitecleim fut allegé condicioun en oustaunt la force de quitecleime.

Johan de Fellington porta son assise de novel disseisine vers Nichole de Fleming et E. sa femme et se pleint estre disseisi de son fraunc tenement etc.

Pass. Assise ne deit estre qe les tenemenz dount il se pleint etc. si furent etc. en la seisine Jake le Fleming qi de ceux tenemenz enfeffa Nichole et E. sa femme et a les heirs Nichole. Puis vient Johan q'ore se pleint et mist debat en ceux tenemenz par quey Nichole parla taunt bele¹⁸ qe mesme cestui J. lui releessa et quiteclama en sa seisine, et par ceo fait. Jugement si assise deive estre.

¹ l'acquitaunce, *Q.* ² escrit, *C, P, Q.* ³ *Om.* qe . . . avant, *C, P, Q.* ⁴ *Speech ends here with* Et ceo voloms averer, *C, P, Q.* ⁵ *For* etc. par . . . relees *subs.* et quitlamastez par quel fet, *C, P, Q.* ⁶ *Herle*, *C, P, Q.* ⁷ pay-assoms, *C, P, Q.* ⁸ *For* les xl . . . a jour, *subs.* etc. a quel jour nous vous payames, *C, Sim., P, Q.* ⁹ An error for 'fumes.' ¹⁰ *Ins.* et uncore sumes, *C, P, Q.* ¹¹ solom, *C, P, Q.* ¹² contract, *C.* ¹³ covenant, *C, P, Q.* ¹⁴ Probably an error for 'mult.' ¹⁵ *Om.* en vous . . . acrest, *C, P, Q.* ¹⁶ *Om.* sanz quele possessioun, *C, P, Q.* ¹⁷ From *T* collated with *D.* ¹⁸ belement, *D.*

Miggeley. The quitclaim was delivered according to the purport of this agreement, which we have put forward and which is your deed. We have fulfilled this agreement in all points, and we wish to aver accordingly. We pray that you answer this deed.

Malberthorpe. We have said that, while we were seised, you released etc. and by that release the right in your person is extinct; and you cannot show that since that time an estate either in right or possession has accrued to you. We ask judgment if an assize there ought to be.

*Herle.*¹ We have said that an agreement was made between us that if we paid to you the forty pounds and delivered to [you] the writing obligatory for one hundred pounds [, then etc.] We have paid you the forty pounds on the day appointed, and we were ready to deliver the writing for one hundred pounds, and if [you] deny these things we will aver them. Moreover fee cannot accrue to [you] unless by the agreement, because the quitclaim was delivered according to the agreement. We ask judgment.

BEREFORD, C.J. If the quitclaim was delivered upon this condition, it is [important].²

Herle. We will aver it.

Malberthorpe. Since we put forward the unconditional quitclaim by which your right was utterly extinguished and accrued to us; and since they do not show that they afterwards had possession without which the right cannot return to them, we ask judgment if the assize ought to be.

III.

A case of novel disseisin in which a condition was alleged against a quitclaim depriving it of force.

John of Ferlington brought his assize of novel disseisin against Nicholas le Flemming and Ellen his wife, and complained that he had been disseised of his frank tenement etc.

Passeley. Assize there ought not to be, for the tenements whereof he complains etc. were sometime in the seisin of James le Flemming, who enfeoffed thereof Nicholas and Ellen his wife and the heirs of Nicholas. Then came John who now complains, and raised a debate about those tenements; whereupon Nicholas spoke so well that this same John released and quitclaimed them to him while they were in the seisin of Nicholas, and by this deed. We ask judgment, if assize there ought to be.

Or 'Hartlepool' according to one report.

² See note 14 opposite.

Herle. Covenant se prist entre Johan et Nichole qe si Johan lui paiast certain jour et lieu xl livres et lui liverast un escrit obligatorie de C. livres, qe adonqe la quitecleime serroit de nule value etc. Et nous vous dioms qe nous lui avoms paiée les ditz xl livres et il les ad resceu et lui tendimes l'escrit et prest sumes uncore. Et qe le covenaut fut tiel, veiez cy son fait qe le testmoigne. Et prioms l'assise.

Pass. Et nous jugement de puis qe vous aviez conu le fait q'est pure en lui mesme, et par le quel le droit se esteint en vostre persone, si assise deive estre.

Migg. La quitecleime¹ si fut liverée solom le purport de ceste escrit q'est² vostre fait, le quel covenaut nous avoms perempli³ touz pointz, solom ceo qe nous voloms averer etc. si vous etc. Et prioms qe vous voillez respondre a ceo fait.

Malb. Vous aviez conu vostre fait qe esteint vostre dreit ne vous ne poez moustrer title plus tardif en la possessioun. Jugement si assise deive estre.

Hunt. Vostre fait testmoigne qe le dreit ne se esteindra⁴ si noun pur la defaute de la paie de les xl livres et auxint le rendre del escrit etc. et del houre qe vous estes païé de les deners, prest fumes⁵ touz jours et uncore sumes a rendre l'escrit solom ceo qe covenaut fut. Jugement si assise etc.

Berr. De ceste part nous chargoms mout si la quitecleim fut livré sur tiel condicioun.

Herle. Nous le voloms averer.

Malb. A ceo n'avendrez mie encountre vostre fait q'est pure si vous ne moustrez title plus tardif coment la possessioun vous fut revenu.

IV.⁶

Ou quiteclame livré par condicioun barre l'assise etc.

Johan de Ferlington porta une assise de novele disseisine vers Nichole le Flemyng e Alice sa femme e P. C. e D. de j mies e une carué de terre en C.

P. C. e D. vous dient qe rien ne ont ne rien ne cleiment ne nul tort ne ont fet.

¹ quitecleme, *D.* ² *sic*, *D.*, qe, *T.* ³ *Ins.* en, *D.* ⁴ estendit, *D.* ⁵ *sic* *D.*, sumes, *T.* ⁶ From Y (fo. 36 r^o).

Herle. An agreement was made between John and Nicholas that if John should pay to him on a certain day and at a certain place forty pounds, and should deliver to him a writing obligatory for one hundred pounds, then the quitclaim should be of no value etc. We tell you that we have paid him the said forty pounds and that he has received them, and we tendered to him the writing, and we are still ready to deliver it to him. And that the agreement was such as we say, see here his deed which witnesses it. We pray the assize.

Passeley. We ask judgment if assize there ought to be, for you have acknowledged the deed, which is unconditional, and by which the right in your person is extinguished.

Miggeley. The quitclaim was delivered according to the purport of this writing, which is your deed. We have performed the agreement in all points, and we will aver accordingly if you wish to deny it. We pray that you answer this your deed.

Malberthorpe. You have acknowledged your deed which extinguishes your right, and you can show no more recent title in possession. We ask judgment, if assize there ought to be.

Huntingdon. [Our] deed witnesses that the right will not be extinguished save by default in the payment of the forty pounds and also in the render of the writing etc.; and since you have been paid the money [and] we have always been ready and still are ready to deliver the writing in accordance with the agreement, we ask judgment if assize there should not be.

BEREFORD, C.J. As regards this, if the quitclaim were delivered on such a condition, we reckon it for much.

Herle. We will aver it.

Malberthorpe. You will not come to that against your deed which is unconditional unless you show a more recent title by which the possession has come back to you.

IV.

A case in which a quitclaim delivered on condition barred the assize.

John of Ferlington brought an assize of novel disseisin against Nicholas le Fleming and [Ellen] his wife and P. C. and D. of a messuage and a carucate of land in C.

P. C. and D. tell you that they have nothing and claim nothing [in the tenements], and that no tort have they done.

Malm. N. e Alice vous respondent e dient qe assise ne deit estre, qar il dient qe Johan en lour seisine relessa e quiteclama tut sun droit au diz N. e A. par sun fet qe cy est. (E mist le fet a la court qe ceo tesmoigna.)

Mygg. Par cele quiteclamance nous del assise ne poent il barrer, qar vous dioms qe le jour qe cele quiteclamance fust fete issi en covint entre Johan e Nichole qe si Johan ne payast au dit N. xl livres le jour de la Pasche l'an etc. en la eglise de Euerwyk, e lui ne liverast un escrist de C. livres le quel il lui devoit, qe la quiteclamance fut en sa force, e s'il le feist qe la quiteclamance ne fust de nule value. Et par tiele condicioun l'aquitaunce lui fust livré. Par quoi le dit Johan le jour de la paye il lui paya xl livres e N. les resceut, e il lui tendi son escrit de C. livres e il le refusa. Et veez icy l'escrit avant dit e lui tend en voz presencez. (Et mist avant l'escrit a la court.) Et demandoms jugement, desicom l'aquitaunce lui fut livré par condicion e nule defaute de la condicion en nostre persone ne puet allegier, si tiele quitaunce de l'assise nous deive barrer. Et veez icy sun fet qe cele condicioun testmoigne. (Et mist avant a la court etc.) La quitaunce fust de eigné temps qe l'escrit de condicion par iij jours.

Alio die demaundé fut de N. e A. s'il savoient autre chose dire a targer ceste assise.

Malm. Sire, Johan nous ad fet ceste quitaunce en nostre seisine par son fet qe cy est. Et demandoms jugement, desicom il ne moustre nule especialté de translacion de possession ne altre title de plus tardif coment franc tenement lui soit acru, e la quitaunce nent dedit, si l'assise puissent avenir.

Herle. La quitaunce vous fust livré par condicion, le quel vostre fet demesne qe cy est testmoigne, sanz ceo qe vous ne puissiez moustrer defaute en nous de la condicion nent forny, si tiele quitaunce a nous soit barre de ceste assise avoir.

Hertepol. Quant la quitaunce, qi est simple en sey é sanz condicion, fust fete en nostre seisine, maintenant le droit qe fust en vostre persone se translata e vesti en nostre persone. Et demaundoms jugement si sanz moustrer title de plus tardif coment franc tenement vous soit acru puissez a l'assise venir.

Malberthorpe. Nicholas and [Ellen] answer you and say that assize there ought not to be, for they say that John, while the tenements were in their seisin, released and quitclaimed all his right to them the said Nicholas and [Ellen] by his deed which is here. (And Nicholas produced the deed to the court, which witnessed this.)

Miggeley. By this quitclaim they cannot bar us from the assize, for we tell you that on the day when this quitclaim was made, it was agreed between John and Nicholas that if John did not pay to the said Nicholas forty pounds on Easter Day in the year etc. in the church at York, and should not deliver to him a writing for one hundred pounds, which John owed to him, then the quitclaim should be in force; and that if this he did then the quitclaim should be of no value. And on this condition the quitclaim was delivered to him. Whereupon the said John on the day of payment paid to Nicholas the forty pounds and Nicholas received them, and John tendered his writing to Nicholas for the hundred pounds and Nicholas refused it. See here the writing afore-said, and John tenders it to him in your presence, (and John produced the writing to the court). And seeing that the quitclaim was delivered to him upon condition, and he can allege no default in us as to the condition, we ask judgment if such a quitclaim ought to bar us from the assize. And see here his deed which witnesses this condition. (And he produced it to the court etc. and the quitclaim was of earlier date than the writing of condition by three days.)

On another day Nicholas and [Ellen] were asked if they could say anything to delay this assize.

Malberthorpe. Sir, John made this quitclaim when the tenements were in our seisin by his deed which is here; and seeing that he shows no specialty of translation of possession nor any other more recent title by which frank tenement has accrued to him, and seeing that the quitclaim is not denied, we ask judgment if to the assize they ought to come.

Herle. The quitclaim was delivered to you on condition, and your own deed which is here witnesses this. [We ask judgment] if such a quitclaim should bar us from having the assize, unless you are able to show a default by the non-performance of the condition on our side.

Hartlepool. When the quitclaim, which is absolute and without condition, was made while the tenements were in our seisin, forthwith the right which was in your person was transferred and vested in our person. And we ask judgment, if you, without showing a more recent title, whereby frank tenement has accrued to you, can come to the assize.

Alio die, concorditer ad barram veniunt et quidam attornatus dixit Sire, la ou Johan de Ferlinton porte ceste assise vers N. e A. sa femme, P. C. e D. vous dient qe rien ne ont ne rien ne cleyment ne nul tort n'unt fet e prest de l'averer par assise. N. e A. sa femme vous dient qe assise ne deit estre qar Jon ad relessé e quiteclamé tut le dreit qu'il avoit en ceux tenemenz par sun fet qe cy est, e pendant le ple, le fet (scilicet alia quietaclamancia) fust fet a Loundres. (Et mist avant le fet a la court.)

Hervy demaunda de Johan si ceo fust son fet.

Johan dist qe oil, qar il resecut en peez fessant C. mars en plein baunke.

Hervi. Si agarde¹ la court qe N. e A. sa femme alerent a Dieu sanz jour e Johan ne preigne rien par sun bref mes soit en la merci etc.

Hervy. Beau me est qe vous estes acordé, e pur l'accord la court est delivéré de grant baret, qar leaument Johan coment qe vous aviez la bone fey pur vous, lei de terre ne vous eust mie servy. Et pur ceo Johan quant vous autrefois lessez voz terres mettez voz covenances trestouz en un escrist etc.

Notes from the Record.

I.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 75d, Yorks.;
Assize Rolls, No. 1113, r. 27.²

An assize of novel disseisin heretofore before John de l'Isle and his fellow justices for assizes at York on [30 December 1310] Wednesday the morrow of St. Thomas the Martyr 4 Ed. II. came to make recognition if Nicholas le Flemmeng' of York and Ellen his wife, Master Henry le Flemyng, Philip le Cordewaner, John of Waterton and Edward le Spenser unlawfully etc. disseised John of Ferlyngton of his free tenement in West Lilling',³ after the first etc. And whereupon John by Giles of Ferlington his attorney complains, that they disseised him of six and a half tofts and eleven bovates of land etc.⁴

And Nicholas and Ellen came and the others did not come, but one Thomas of Pontefract came and answered for them as their bailiff: and he said that they had done no injury nor disseisin thereof; and of this they put themselves upon the assize etc.

¹ agarda, Y.

² An assize between the same parties as were parties to this assize concerning six messuages eleven bovates and two shillings and sixpence rent was taken before the same Justices on 7 January 1310 (*Assize Rolls*, No. 1113, r. 29). On an adjournment into the Common

Bench the demandant was non-suited (*De Banco Rolls*, No. 180, r. 201).

³ West Lilling and Farlington are near Sheriff Hutton.

⁴ The clerk who enrolled this case has followed the wording of the Assize Roll, but has not uniformly changed the present into the past tense.

On another day they came by agreement to the bar, and an attorney said :

Sir, whereas John of Ferlington brings this assize against Nicholas and [Ellen] his wife, P. C. and D. tell you that they have nothing and claim nothing [in the tenements] and have done no wrong ; and that ready are they to aver it by the assize, and Nicholas and [Ellen] his wife tell you that assize there ought not to be, for John has released and quitclaimed all the right which he had in these tenements by his deed, which is here, and this deed, (that is to say a second quitclaim,) was made during the plea at London. (He produced it to the court.)

STANTON, J. asked John if this was his deed.

John said it was, for he received on making peace one hundred marks therefor in full court.

STANTON, J. The court awards that Nicholas and [Ellen] his wife go adieu, and that John take nothing by his writ, but be in mercy.

STANTON, J. Well it is for me that you are agreed, and by your agreement is the court spared much trouble, for in justice, John, though good faith is on your side, the law of the land would have served you nought. And do you, John, when you lease your lands again, put all your covenants in one writing etc.

Notes from the Record (*continued*).

And Nicholas and Ellen said that the assize ought not to be made thereof etc. because they said that one James le Flemyng gave the tenements to Nicholas and Ellen to hold to Nicholas and Ellen and the heirs of Nicholas, and afterwards, when the tenements were in the seisin of Nicholas and Ellen, John remised and quitclaimed to Nicholas and his heirs all the right and claim which he had in the tenements. And Nicholas proffers a certain writing under the name of John which witnesses this, of which the date is at York [13 May 1307] the Saturday next after the feast of St. John before the Latin Gate, 35 Ed. I. Whereupon he asks judgment if against his deed he can have an action etc.

And John well acknowledged that the writing was his deed, but he said that that deed ought not to harm him in this behalf, because he said that the writing was made and delivered to Nicholas under certain conditions, that is to say, that if John his heirs or executors should pay to Nicholas his heirs or executors forty pounds in the church of the Friars Minor of York on the feast of St. Martin in winter 3 Ed. II. and should deliver to Nicholas a certain writing obligatory for one hundred pounds that Nicholas would render and deliver all the tenements to John his heirs or assigns together with the quitclaim and all charters writings and muniments which Nicholas had concerning the tenements, and that the writings and muniments in future should be of no value or moment : and likewise that when the pay-

Notes from the Record (*continued*).

ment of forty pounds had been made, from then it should be lawful for John to enter into and hold all the tenements, notwithstanding any charters writings or other muniments whatsoever. And he proffers a part of a certain writing thereof between them indented which witnesses the premisses in form aforesaid, of which the date is at York on [17 May 1307] Wednesday next before the feast of St. Dunstan the Bishop 35 Ed. I.

And he said that on the day and in the year and place aforesaid he paid to Nicholas the forty pounds and was ready to deliver to him the writing obligatory if he had been willing to receive it and to have delivered seisin of the tenements to John. Whereupon he said that since he paid to Nicholas the forty pounds according to the form of the writing and was ready to return the writing obligatory and [was] still ready to return the writing to him there in court, and since it is not in any way through John [*nec in aliquo stat per Iohannem quin*] that the conditions in the writing contained in all their effect were not completed; and since John after payment of the forty pounds as is aforesaid entered into the tenements by virtue of the condition, and was in seisin thereof as of his free tenement until Nicholas and the others unlawfully etc. disseised him thereof as he [was] ready to aver by the assize, he [asked] judgment if, by the quitclaim which is of anterior date, he ought to be precluded from the action.

And Nicholas and Ellen said that, since John by the quitclaim which he acknowledged above excluded himself totally from the fee and the right which he had in the tenements, by which it follows that the right of the tenements was vested in the person of Nicholas by the writing made in the seisin of Nicholas, [they] ask judgment if to the writing which is conditional [they] have need to answer etc.

And a day was given to the parties here at this day to hear their judgment etc., saving to either party their arguments etc. And be it known that the original writ is sent here with the record etc.

And now comes John of Ferlington in his own person etc. and likewise Nicholas and Ellen come and the others do not come. And Nicholas and Ellen say that John can claim nothing in the tenements nor ought the assize to be made thereof, for they say that John on [19 February 131?] the Friday next before the feast of St. Mathias the Apostle 4 Ed. II. remised and for ever from him and his heirs and assigns quitclaimed to Nicholas and Ellen and the heirs and assigns of Nicholas all the right and claim which he had or in any way could have in the tenements and in all services rents and profits issuing from the tenements and to this same John due, and he granted for himself and his heirs that he and his heirs will warrant the tenements to Nicholas and Ellen and the heirs of Nicholas etc. for ever, by the writing of John of Ferlington which they proffer and which witnesses this etc. Whereupon they ask judgment if an action can avail him etc.

And John of Ferlington cannot deny that the writing is his deed etc. Therefore it is awarded that Nicholas and Ellen go thereof without day etc.;

Notes from the Record (*continued*).

and let John take nothing by this writ, but be in mercy for his false claim.

And be it known that John asked that all the writing be enrolled; and it is enrolled here in the bench elsewhere among the rolls of charters etc.

II.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), Roll of charters, 1d.

To all who shall see or hear this writing John of Ferlyngton knight greeting in the Lord. Know that I have remitted released and for ever from me my heirs and assigns quitclaimed to Nicholas the son of James le Flemang of York and Ellen his wife and the heirs and assigns of Nicholas all the right and claim which I ever had or in any way could or can have in six tofts eleven bovates of land in the town and territory of Westlyllyng together with two shillings and sixpence of annual rent issuing from that plot of land which is called the Hallegarth in Westlyllyng, all which tenements James le Flemang father of Nicholas had of my gift, and which Nicholas and Ellen have of the gift and feoffment of James the father of Nicholas. Further I remit release and for ever from me my heirs and assigns quitclaim to Nicholas and Ellen his wife and the heirs and assigns of Nicholas all the right and claim which I ever had or in any way could or can have in all other rents services or profits issuing from the six tofts eleven bovates of land therefrom due to me so that neither I John of Ferlyngton nor my heirs nor any person through us or in our name any right or claim in the six tofts eleven bovates of land nor in the two shillings and sixpence of annual rent from the plot of land which is called le Hallegarth issuing nor in other rents services or profits from the tenements issuing and therefrom due to me can demand ask or claim in future in any way. Further I John grant for myself and my heirs that I and my heirs the tenements and rents aforesaid to Nicholas and Ellen his wife and the heirs and assigns of Nicholas against all men will warrant acquit and for ever defend. In witness whereof to this present writing I have put my seal, these being witnesses, Sir Marmaduke of Twenge, Sir Milin of Stapelton¹ knights, William of Herle,² Robert of Hedon, Robert Russel, Hugh of Seleby, Thomas of Alwarthorp, Thomas of Stodleye, William of Swynton, John of Ellerker clerk, William of Byngham, William of Hatelsay and John de Belley (*de bella aqua*) clerk and others. Given at Westminster the [19 February 131⁰₁] Friday next before the feast of St. Mathias the Apostle 4 Ed. II.³

¹ This is probably the same person as Miles of Stapelton, who was steward of the king's household in 1307 (*Cal. Pat. Rolls* 1307-1310, p. 82). His name, however, is here plainly written *Milino*.

² It will be noticed that several of the witnesses are serjeants.

³ By a deed of release dated 7 February 131⁰₁ Nicholas Flemming of York had already released all actions and demands which he had or could have against John of Ferlington knight. This will be found on the same roll as John of Ferlington's charter.

44. SHREWSBURY v. SHREWSBURY.

I.¹

Nusaunce, ou feire fuist levee nusaunt a autre feire etc. ; et un eveske porta le bref, et il se fist title de coe qe il trova soun predecessour seisi etc.

L'evesqe² de Salesbir'³ porta soun bref de nusaunce devers la comunauté de mesme la ville et counta⁴ q'atort avoyent levee une feire nusaunt a sa fraunche feire en mesme la ville. Et pour ceo atort qe la ou il avoit sa fraunche feire en⁵ la veillee le jor⁶ de seint Piere Aduyncula et iij jours siwant a quel feire soleient venir marchauntz ove lour merz et marchaundises, par quei il soleyent profit prendre⁷ en tonue⁸ et en estallage et autre manere profit⁹ de feire etc., la ad la comunauté levee une feire en mesme la ville la veillee seint Jake et iij jours siwantz qe n'est qe vj jours avaunt la veillee etc. a quele feire veignent les marchauntz ove lour merz et marchaundises et illoesqe le vendent et illoesqe fount lour achatz¹⁰ et puis retournent,¹¹ par quei il perde ses profitz etc. en tonue et en estallage et issint nusaunt a sa fraunche feire atort et a ses damages¹² etc.

Pass. D'aver faire c'est chose reale, et il sount gentz de religioun qe ne pont clamer par¹³ conquete. Jugement s'yl doyvent estre respondu¹⁴ saunz ceo q'il moustrent coment il puissent feire clamer.¹⁵

Herle. A vous ne devons moustrer coment etc., mes nous sumes pleint coment vous nous avietz fait un tort.¹⁶

Pass. S. est la citee le roi et la ville respount des issues.¹⁷ Jugement si saunz especiauté etc.

Herle. A vous n'avoms mester a moustrer etc. ; mais si la court voille savoir,¹⁸ nous dirroms volunters.

Ber. La ou vous demaundet¹⁹ coment il cleyment etc., vous respondrez,²⁰ pur ceo qe c'est la citée le roi, mes si ceo fuist autre²¹ nous nel ferroms ja.²²

¹ From *B* collated with *C, G, P, Q, R.* ² L'abbé, *C, P, Q, R.* ³ Salop, *C, P, Q, R.* ⁴ *Om.* et counta, *C, P, Q.* ⁵ *Om.* en, *R.* ⁶ *Om.* le jour, *C, R, G.* ⁷ *Ins.* com, *C, P, Q, R.* ⁸ *Ins.* et en tollage, *R;* et tollage *C, P, Q.* ⁹ issue, *C, P, Q.* ¹⁰ *For* illoeqes . . . achatz *subs.* akatent, *C, P, Q.* ¹¹ se retrent, *C;* se returrent, *P;* se retreent, *Q, R.* ¹² *For* et en . . . damages, *subs.* etc. atort, *C, P, Q.* *Om.* et a ses damages, *R.* ¹³ de, *C, P, Q.* ¹⁴ receu, *R, r', C, P, Q.* ¹⁵ aver, *P, Q.* ¹⁶ *For* coment . . . tort *subs.* de un tort qe vous nous avez fet, *C, Sim., P, Q.* ¹⁷ *Ins.* al eschequer, *C, P, Q, R.* ¹⁸ *For* voille savoir *subs.* nous demaunde, *C, P, Q.* ¹⁹ demaudent, *G.* ²⁰ *For* La ou . . . respondrez *subs.* La court vous demaunde, *C, Sim., P, Q;* la court demaunde coment vous clamet, *R.* ²¹ *Ins.* ville, *R.* ²² *For* nous . . . ja *subs.* nous n'enquerroms, *C;* nous enquerroms, *P;* nous enquerreïoms, *Q;* n'aquerroms ja, *R.*

44. SHREWSBURY *v.* SHREWSBURY.¹

I.

Nuisance. A fair was raised which was a nuisance to another fair. An [abbot] brought the writ of nuisance and made his title on the fact that he found his predecessor seised etc.

The [abbot of Shrewsbury] brought his writ of nuisance against the commonalty of the same town and counted that wrongly had they raised a fair to the nuisance of the abbot's free fair in the same town. And for this wrongly, because there where the abbot had his free fair on the Vigil of St. Peter's Chains and the three days following, to which fair merchants were wont to come with their wares and merchandise, and so [he was] wont to take profits, as in toll and stallage and other manner of profits to fair belonging etc., there has the commonalty raised a fair in the same town, on the vigil of St. James and the three days following, six days only before the vigil of St. Peter's Chains, and to this fair the merchants come with their wares and merchandise, sell them there and make their purchases there, and then return; and thereby the abbot loses his profits etc. as in toll and stallage, and so they have wrongly raised a fair to the nuisance of the abbot's free fair, and to his damage etc.

Passeley. To have a fair is a royal thing, and they are men of religion and cannot claim by conquest.² We ask judgment if they ought to be answered unless they show how they can claim fair.

Herle. To you we have no need to show how we claim the fair. We are complaining that you have done us a wrong.

Passeley. Shrewsbury is the king's [borough] and answers for its issues at the Exchequer. We ask judgment, if without specialty etc.

Herle. To you we have no need to show how, but if the court wishes to know, we will say willingly.

BEREFORD, C.J. Where [they] ask you how [you] claim, do you answer, for this is the king's [borough]; but if it were another's, we should not order it.

¹ This is Fitz. *Assise*, fo. 90 v^o, No. 448. It appears in the Old Edition on p. 96.

² As to claiming by conquest, see vol. ii. p. 73, and cf. vol. iii. p. 136.

Herle. Nostre predecessour fuist seisi et nous trovames nostre esglise seisie. Jugement.

Pass. Il ne moustre ¹ rien. Jugement.

Ber. Il ount dit qe l'evesqe trova sa ² esglise seisie. Ore responez vous.

Pass. Celui qe veot avoir fraunchise il covyent q'il la cleyme en eyre qaunt etc.³ et ⁴ vous dyoms qe en le eyre de S. tenue par ⁵ Sire J. de B. l'an etc. cestui evesqe ⁶ ne clama mye etc. n'al eyre procheyn devaunt etc. tenue par ⁷ Sire Rauf de Hengham etc. a S. l'an etc. le predecessour mesme cestuy evesqe ⁸ ne clama nyent etc. ne ore ne moustre especiauté, ne ne moustre coment puis cele houre ⁹ la fraunchise luy soit avenuz.¹⁰ Jugement etc.

Herle. Nous avoms dit qe nous trovames nostre esglise seisie et ceo ¹¹ suffit, q'en eyre ceo serroit bon response qe nous trovames nostre esglise seisie ¹² saunz ceo qe le roi portast soun quo warranto.

Ber. Si le roi portast soun quo warranto devers vous ceo ne serroit pas bon ¹³ reponse.

Scrop. Mesqe ¹⁴ il ne clamerent ¹⁵ lour fraunchise en eyre, puist estre qe a cele temps fuist ele en la mayn le roi et puis replevy.

Migg. Il ne moustre de ceo ren a la court.¹⁶

Ber. La comunalté met avaunt chartre qe tesmoigne qe le roi ad granté q'il eyent ¹⁷ feire en mesme la ville et c'est la ville le roi. Et vous rien ne moustretz sy noun qe vous trovastes vostre esglise seisie, par quei nous sumes avisetz de ceste part qe ¹⁸ nous n'agardoms mye q'il respoigne saunz ceo qe vous dietz autre chose. Mes autre serroit si la ville fuist a autre qe au roi.¹⁹

[*Herle.*²⁰ Donqe vous dioms qe nous et nos predecessours avoms esté ²¹ seisi de feire avoir du temps dunt etc. Prest etc.]

*Herle.*²² Nous avoms dit q'en le heire de S. devaunt Sire J. de B. ne clama cestui evesqe ⁸ nule feire ne soun predecessour devaunt luy en l'autre eyre etc. ne il nul especiauté ne moustre etc. Jugement etc.²³

¹ vous ne moustrez, *C, P, Q.* ² *For* Il ount . . . trova sa *subs.* Il troverent lour, *C, Sim., P, Q.* ³ *Om.* qaunt etc., *C, P, Q, R.* ⁴ *Subs.* mes nous, *C, P, Q.* ⁵ devant, *C, P, Q.* ⁶ abbé, *C, P, Q, R.* ⁷ devant, *C, P, Q, R.* ⁸ abbé, *C, P, Q, R.* ⁹ eyre, *G.* ¹⁰ *For* ne ore . . . avenuz *subs.* ne ore ne moustre nule especiauté coment il sunt avenuz a la feyre, *C, Sim., P, Q, R.* ¹¹ *Ins.* nous, *C, P, Q, R.* ¹² *Om.* qe nous . . . seisie, *C, P, Q.* ¹³ *For* pas bon *subs.* nul, *C, P, Q.* *Om.* bon, *R.* ¹⁴ Tut ne, *C, P, Q.* ¹⁵ *Ins.* mye, *R.* ¹⁶ This speech is omitted in *C, P, Q.* ¹⁷ *Om.* q'il eyent, *C, P, Q.* ¹⁸ *Om.* nous sumes . . . qe, *C, P, Q, R.* ¹⁹ *Om.* saunz ceo . . . roi, *C, P, Q.* *For* a . . . roi *subs.* autri qe la ville le roi, *R.* ²⁰ From *G.* This paragraph is omitted in *B.* ²¹ *Om.* avoms esté, *C, P, Q, R.* ²² *Frisk,* *G, C, P, Q, R.* ²³ *Add* Et sic pendet, *C, P, Q;* Et sic ad iudicium, *R.*

Herle. Our predecessor was seised and we found our church seised. Judgment.

Passeley. They show nothing. Judgment.

BEREFORD, C.J. They have said that the [ablot] found his church seised. Now you answer that.

Passeley. He who wishes to have a franchise must claim in the eyre when etc. We tell you that in the Shropshire eyre held by Sir John of Berwick in [22 Edw. I.] this [abbot] did not claim etc., nor in the eyre next before it held by Sir Ralph of Hengham etc. at Shrewsbury in the year etc. did the predecessors of this [abbot] claim etc. nor does he now show specialty nor how since that [eyre] the franchise has come to him. Judgment etc.

Herle. We have said that we found our church seised and that is sufficient, for in an eyre it would be a good answer that we found our church seised, unless the king brought his *quo warranto*.

BEREFORD, C.J. If the king brought his *quo warranto* against you, it would not be a good answer.

Scrope. Although they did not claim their franchise in the eyre, it may be that at that time the fair was in the king's hand and that it was afterwards replevied.

Miggeley. The abbot shows nothing of that to the court.

BEREFORD, C.J. The commonalty puts forward a charter which witnesses that the king has granted them a fair in the same town, and this town is the king's. You show nothing except that you found your church seised. Therefore we are advised as to this that we do not award that the commonalty answer, unless you say something else. But it would be otherwise if the town belonged to anyone but the king.

Herle. Then we tell you that we and our predecessors have been seised of having the fair etc. from a time whereof etc. Ready etc.

[*Friskenev.*] We have said that neither in the eyre of Shropshire before Sir John of Berwick did this [abbot] claim any fair, nor did his predecessor before him in the other eyre, nor does he show any specialty etc. Judgment etc.

Et¹ puis vyndrent les burgeises et disoient q'il n'avoient levee nule feire ; prest etc.

Et les autres le revers etc.

II.²

Ou feire fut clamé en la ville le rey saunz mostrer especiauté autre qe prescripcioun de tens.

Ceo vous mostre l'abbé de Salisbur' qe cy est qe la commonauté de la ville de Salesbur' qe illoques est atort ad levé un feire anusant a fraunke faire le dit abbé en mesme la ville. E pur ceo atort qe la ou il ad sa faire en mesme la ville pur iij jours, *scil.* la veille de seint Pere aduincula e le jour e lendemein, la ou marchauntz de diverses pais solaient venir ove lour merz e marchandies a vendir e a doner tonu e allouer estallez, la ad il levé un faire en mesme la ville la veille seint Jake e les iij jours swyauntz par quei les marchauntz qe solaient venir a sa faire e allouer estalles e doner tounuye, la vount il a la faire la dit communauté ove lour merz e marchandiez e illoques les vendent e lowent etc. e donent etc. a damage etc.

Mug. La comonauté de la ville de Salesbur' par lour attorné qe cy est defent etc. E demandoms jugement, desicom la ville de S. n'est la ville le abbé, einz est la ville le roi, si tiel regauté en la ville le roi saunz moustrer especiauté puisse tiel fraunchise³ clamer.

Malm. Sire, nous lour surmettoms une nusaunz a quei il ne respouident nient, einz pledent a l'estat le roi. Jugement de eux com de noun defendu.

Scrope, justice. Il dient qe ceo est une fraunchise qe vous clamez en la ville le roy, e si la court vousit pleder ceo plee saunz ceo qe vous mostrevez especiauté assez, la court grantereit ove vous tiel fraunchise, par quei il semble a la court qe mestier vous est a mostrer especiauté etc.

Herle. Nous trovames nostre eglise seisi de tiel fraunchise etc.

Ber. a Mug. Il dient q'il trovent lour eglise seisi.

Mug. A ceo ne poent il avenir, qar en le heir de Salesbur' devant Sire R. de Heng' e ses compaignons fut crié qe touz ceux qe vousicent

¹ This and the next paragraphs are omitted in *C*, *P*, *Q*, *R*.

² From *Y* (fo. 221 r^o).

³ The words 'tiel fraunchise' are superfluous.

And then the burgesses came and said that they had not raised any fair, ready were they etc.

And the others the reverse etc.

II.

A case in which a fair was claimed in the king's town without any specialty being shown other than prescription.

This shows you the abbot of [Shrewsbury], who is here, that the commonalty of the town of [Shrewsbury], which is there, wrongly has raised a fair to the nuisance of the free fair of the said abbot in the same town. And for this wrongly because, there where the abbot has his fair in the same town for three days, to wit, the eve, the day and morrow of St. Peter's Chains, to which merchants from different parts were wont to come with their wares and merchandise to sell them, and at which they were wont to give toll and to hire stalls, there has the commonalty raised a fair in the same town on the day of St. James and the three following days, whereby the merchants who were wont to come to the abbot's fair and to hire stalls and give toll, come to the fair of the said commonalty with their wares and merchandise, and there sell and hire etc. and give etc. to the damage etc.

Miggeley. The commonalty of the town of [Shrewsbury] by its attorney who is here defends etc. And seeing that the town of Shrewsbury is not the abbot's town but the king's town, we ask judgment if he can claim such a regality in the king's town without showing specialty.

Malberthorpe. Sir, we impute a nuisance to them, to which they make no answer but plead the king's estate. We ask judgment of them as undefended.

SCROPE, J. They say that this is a franchise which you claim in the king's town. If the court were willing to hold the plea without your showing sufficient specialty, the court would be granting that such a franchise was vested in you. Therefore the court thinks that you must show specialty etc.

Herle. We found our church seised of such a franchise etc.

BEREFORD, C.J. to *Miggeley.* They say that they found their church seised.

Miggeley. To that they cannot come, for in the eyre of [Shropshire] before Sir Ralph of Hengham and his companions it was

fraunchise clamer, q'il clamasent de deinz le eir, par quei il ne nul de ces predecessours abbes ne clameient cele faire. E demandoms jugement saunz ceo q'il ne mostresent especiauté du roi du temps plus tardif, s'il puissent tiel fraunchise clamer en la ville le roi.

Malm. ut prius. Il pledent al estat le roy etc. e ne respondent etc. e demandoms jugement d'eux com de noun defendu etc.

Ber. a Mug. Avez nul especiauté qe le roi vous ad granté faire ?

Mugg. Sire, oil. Veez si la chartre le roy.

Demandé fut par la court del abbé, s'il oust autre chose pur affermer son estat.

Herle. Lui e ses predecessours seisi du temps dont memorie ne court.

Ber. Vous ne metez autre chose pur vous.

Herle. Il nous semble qe ceo est asez pur nous.

Ber. Tendez vos jugements a treys semeines de Pasche.

Quo die adiornati fuerunt per essonium usque in quindenam sancti Michaelis.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 148, Salop.

The commonalty of the town of Shrewsbury was summoned to answer the abbot of Shrewsbury on a plea why it raised a fair in Shrewsbury to the nuisance of his free fair in the same town etc. And whereupon the abbot by his attorney says that—whereas he has his free fair in the town of Shrewsbury, to wit on [31 July] the vigil of St. Peter's Chains to last continuously during the three days following, the commonalty has raised a fair in the same town, on [24 July] the vigil of St. James the Apostle, next before the vigil of St. Peter, to last during the two days following, to wit, four days before the day of the abbot's fair whereby the merchants as well of that country as others, who were wont to come with their merchandize and wares to the abbot's fair on the aforesaid three days etc. to buy wares there or to expose them for sale come to the fair of the commonalty to buy there such wares merchandize and other things and to expose them for sale, and they subtract themselves from coming to the abbot's fair etc. whereby the abbot loses hire of stalls, stallage, toll and other profits to the fair belonging, to the nuisance etc. Whereupon he says that he is injured and has damage to the value of one thousand pounds; and thereof he brings suit.

And the commonalty comes by its attorney and says that the town of Shrewsbury is the king's free borough and that the commonalty are the king's men and free burgesses of the town; and it asks that the abbot may show etc. by what he has or ought to have his fair in the king's town etc. since the abbot is not lord of the town etc.

proclaimed that all those who wished to claim franchises should claim them within the eyre, whereupon neither he nor his predecessors abbots of Shrewsbury claimed that fair. We ask judgment, if without showing the king's specialty of a more recent date than the eyre he can claim such a franchise in the king's town.

Malberthorpe (as before). They plead about the estate of the king, and do not answer us. We ask judgment of them as undefended etc.

BEREFORD, C.J. to *Miggeley*. Have you any specialty showing that the king has granted you the fair?

Miggeley. Sir, yes. See here the king's charter.

The abbot was asked by the court if he had anything to affirm his estate.

Herle. He and his predecessors have been seised from a time whereof memory runs not.

BEREFORD, C.J. You put nothing else forward on your behalf.

Herle. We think that this is sufficient for us.

BEREFORD, C.J. Await your judgments till three weeks after Easter.

On that day they were adjourned by essoign till the quindene of St. Michael.

Note from the Record (*continued*).

And the abbot says that he found his church seised of the liberty of having the fair, as is aforesaid, and that he complains of the nuisance done to him by the commonalty by their fair raised to the nuisance etc. nor has the abbot any plea against the king in this behalf, whereby he has need to show warrant etc. He asks judgment if by the allegation of the commonalty he has need to show title (*docere de titulo*) to his fair, or if the commonalty can escape by this fact of their tort (*per hoc de iniuria*) done to the nuisance etc. from answering etc. especially as the commonalty has not denied that the abbot has his fair in the town etc.

And the commonalty proffers the king's charter¹ which witnesses that the king granted to the men of the king's town of Shrewsbury that they and their heirs should have a fair in the town every year to last for three days, to wit the vigil, the day and the morrow of St. James the Apostle for ever. And since the abbot strives to invalidate the king's grant made to the king's men of his town by reason of the fair which the abbot says that he has in the king's town; and of having this fair the abbot shows no special deed

¹ On 20 September 1267 the king granted the men of Shrewsbury a fair on the vigil, the feast and the morrow of St. Clement (*Calendar of Charter Rolls*, ii. 80). On 5 June 1309 Edw. II.

granted that in lieu of the fair on these days they should have one on the vigil, the feast and the morrow of St. James the Apostle (*Ibidem*. iii. 127).

Note from the Record (*continued*).

by the grant of the king or his progenitors etc. it asks judgment etc. It says also on behalf of the king that in the last eyre of the king's justices in the county aforesaid the abbot did not claim the franchise of having the fair, and this it is ready to aver on behalf of the king by the record of the rolls of John of Berewic¹ and his fellows then justices etc. Whereupon it prays judgment etc.

And the abbot being asked by the justices if he has anything or wishes to show anything to the court concerning the fair which he claims etc. says as before that he found his church seised of the liberty of fair etc. and that he has no need at present to show any other warrant etc.; and he shows nothing else for maintaining his fair etc. but he says for title etc. that he and his predecessors abbots of Shrewsbury were seised of having the fair in the town, continuously etc. from a time whereof there is no memory etc. And this he is ready to aver etc.

A day is given to them for hearing their judgment here three weeks after Easter, saving to the parties their arguments to be declared on either side etc.

Afterwards at that day the commonalty caused itself to be essoigned against the abbot, and it had a day by its essoignor here at this day, to wit the quindene of St. Michael. And now came the parties by their attorneys etc. and a day is given them for hearing their judgment here on the

45. CLERBEK *v.* LINCOLN.²

Attachiamantum super prohibicionem, ou le bref fut porté vers les ordeneries, e eux voleient le bref abatre, pur ceo q'il dit:—*quare secutus fuit*³ *placitum etc.*—Et non potuit. Et pus l'evesqe se mist en bon pais, e les autres se defendirent par lour lay.

Un G. porta son bref de attachement sur la prohibicion vers Johan evesque de Nicole e N. e W. de C. qe suerent play en court Cristiene de lay chatel qe n'est matrimoine ne testament, scilicet de ij souz d'argent e iiij darrés de pain.

Wilby. defendi tort e force etc. e quanque est encontre la prohibicion etc. Avis est a nous q'il ne deivent estre respondu, e par la reson qe lour bref e lour counte suppose qe nous avoms sui play en court Cristiene etc. en supposant ceste sute estre fet devant juges la ou n'i ad autres juges qe nous. E demandoms jugement etc.

¹ John of Berwick and his fellows were justices in eyre in 20 Edw. I. (*Placita de Quo Warranto*, p. 674). ² From Y (fo. 221 r^o). ³ An error for 'secuti fuerunt.'

Note from the Record (*continued*).

quindene of St. Hilary, saving to the parties their arguments etc. as above etc. Afterwards at that day came the parties by their attorneys and a day is given them here for hearing their judgment, the quindene of the Holy Trinity, saving to the parties their arguments etc. Afterwards process thereof being continued until this day, that is to say the morrow of St. Martin 6 Ed. II., the parties came etc. and a day is given them here three weeks after Easter for hearing their judgment etc. in the same state as now. At which day the abbot caused himself to be essoigned etc. and he had a day by his essoignor here at this day, that is to say the quindene of St. Michael etc. And now came the parties by their attorneys, and a day is given them of hearing their judgment here on the quindene of Hilary in the same state as before etc. Afterwards process on either side being continued until three weeks from Easter 8 Ed. II. the parties came by Robert of Styueton the attorney of the abbot and William of Routon the attorney of the commonalty. And the commonalty answers further, and defends tort and force when etc. and well it denies that the abbot has any fair in the town of Shrewsbury nor had on the day of the purchase of the writ. And this he is ready to aver.

And the abbot says that he has a free fair in the town of Shrewsbury and had on the day of the purchase of the writ, to wit on 6 August 3 Ed. II. : And he asks that this may be enquired by the country.

Issue is joined and a *venire facias* awarded here for the quindene of St. Michael.

45. CLERBEK *v.* LINCOLN.

Attachment upon prohibition. The writ was brought against the ordinaries, and they wished to abate the writ because it said *quare secutus fuit placitum* etc. And [they] could not do so. Afterwards the bishop put himself on the country, and the others defended by their law.

One G. brought his writ of attachment upon the prohibition against John bishop of Lincoln and N. and W. of C. because they sued a plea in the Court Christian of lay chattels which were neither of matrimony nor testament, that is to say of two shillings in money and four pence worth of bread.

Willoughby defended tort and force etc. and all that is against the prohibition etc. And we are of opinion that they ought not to be answered, and for the reason that their writ and their count suppose that we sued in the Court Christian etc. and supposed this suit to be made before judges, whereas there were no other judges than ourselves. And we ask judgment etc.

Ber. Vous com juges poez enquire diverses choses de vostre office, dont home put estre entaglé devant vous a vostre suite demeine e a nul autre suite. E si ceo bref fut abatu james povers home n'averit dreit par vostre swyte en vostre court des choses quis¹ de vostre offices. E d'autrepart le roy est party en ceo bref, par quei dites autre chose.

Wilby. Sire, Jon evesque respond, e dit q'il ne suit nul plee en court Cristiene etc. e prest del averer. E quant a N. e W. prest sont a defendre encontre ley e encontre sa suite etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 164, Lincoln.

John bishop of Lincoln, Master John of Haryngton and Master Peter of Dalberby were attached to answer Ralph of Clerbek of Fulestowe, on a plea why they together with Roger the parson of the church of Kaylesthorp,² William Beke of Fulestowe Walter le Clerke of Fulestowe and Roger le Lauender of Fulstowe sued a plea in the court Christian of chattels and debts etc. which are not of testament or matrimony against the prohibition of the king etc. And whereupon Ralph by his attorney complains that whereas the bishop and the others together etc. impleaded Ralph before themselves in the court Christian of chattels and debts etc., to wit, demanding from him two shillings and four pennyworths of bread etc. which are not of testament or matrimony etc. to wit at Kelesterne³ in the parish church of the same vill, and whereas Ralph afterwards at Welton next Lude in the parish church of the same vill on [29 November 1307] the Wednesday next after the feast of St. Katherine the Virgin 1 Ed. II. in the presence of William of Mereborn Walter Gamel and Richard atte Nook (*in Angulo*) and others delivered to the bishop and the others the king's writ of prohibition that they should not sue that plea further in the court Christian etc., the same bishop and the others notwithstanding the prohibition etc. nevertheless sued the plea in the court until sentence of excommunication was promulgated against Ralph etc. against the prohibition etc. Whereupon

¹ This word probably represents 'enquis.'

² This is Calcethorpe, near Louth. Kelstern and Welton are near Louth.

BEREFORD, C.J. You as judges can enquire divers matters of your office ; and therefore a man may be entangled before you at your own suit, and at that of no other person. If this writ were abated a poor man in your court would never have his right at your suit in matters enquired¹ of your office. And besides the king is a party in this writ, so say something else.

Willoughby. Sir, John the bishop answers and says that he sued no plea in Court Christian etc. and ready are we to aver it. And as to N. and W. ready are they to defend against him and against his suit etc.

Note from the Record (*continued*)

he says that he is injured and has damage to the value of twenty pounds, And thereof he brings suit etc.

And the bishop and the others come by their attorney and defend tort and force when etc. And the bishop denies that he sued any plea in the court Christian against the prohibition etc. as Ralph imputes to him, and of this he puts himself upon the country.

Issue is joined and a *uenire facias* awarded here for the quindene of Trinity.

And Master John and Master Peter likewise deny that they sued any plea in the court Christian of chattels and debts which are not of testament or matrimony etc. against the prohibition etc. And this they are ready to deny against him and his suit as the court shall award. Therefore it is awarded that they wage their laws to him, each of them twelfth handed. And let them come with their laws here at the aforesaid term in their own persons etc. Pledges of their laws William of Cliston and William of Horblyng of the county aforesaid etc.

Afterwards at that day came Ralph by his attorney. And the others came and they made their laws thereof. Therefore let John and Peter go thereof without day, and Ralph take nothing but be in mercy for his false plaint etc.

¹ See note 1 opposite.

46. BARDOLF v. BARDOLF.

I.¹

Quid iuris clamat ou cely a qi la reversioun fut granté fust deinz age. Et pur coe qe il ne se poeit obliger a la garrauntie ne à l'aquitaunce fust agardé qe ele ne s'atourna pas etc.

Un home siwit le *quid iuris clamat* vers une femme qe vient en court etc. Demaundé fuist que² dreit etc.

*Hengh.*³ Terme de nostre⁴ viè par fait et⁵ dil heritage le conissour. Et vous dyoms qe attourner ne devoms⁶ qe celui a qi la reversioun est granté⁷ est deinz age, et ne puist estre obligé a la garrantie n'al aquitaunce, issint qe sy nous attournassoms nous perderoms⁸ l'un et l'autre. Jugement si nous devoms attourner etc.

Malm. Nous sumes tenant del⁹ chief seigneur de mesme les tenemenz de dreit et par estatut, et¹⁰ il nous accepta come tenaunt par force de lei, *ergo* vous la nostre tenaunt.¹¹

Fr. Si ele fuist empledé ele vouchereit celui a qi la reversioun appent par resoun de reversioun,¹² *eadem racione*, le liereit al aquitaunce.

Malm. Jeo vous respoigne qaunt a la garrauntie et¹³ l'aquitaunce; qe qaunt a la garrauntie s'accioun est reservé par le fait q'il conissoit¹⁴ devers soun lessour,¹⁵ et qaunt al aquitaunce ele purra porter bref de covenant vers le grauntour et dereiner l'aquitaunce par ley et ses¹⁶ damages. Estre ceo jeo n'entenke mye q'ele porra soun bref d'aquitaunce q'est en le droit user depuis q'ele n'ad mesqe terme de vie. Et d'autrepart il ount conu qe le conissour n'ad rien par quei¹⁷ ele ne porra en nule manere estre perdant.

Ber. Tout n'eit il ren, ceo n'est mye enchesoun d'attourner; et la ou vous dites q'ele ne puist soun bref de meen usier, pur quei ne mye auxint bien come cele qe tient en douwere?

Malm. Pur ceo q'ele tient¹⁸ par fet issint qe si ele seit destreint

¹ From *B* collated with *A*, *D*, *G*, *T*, but for the first paragraph in *A*, *D*, *T* see next report. In *T* there are two reports, of which one occurs among the cases of Hilary term, the other among those of Easter term. They are here distinguished as *T*₁ and *T*₂. ² *queu*, *G*. ³ *Ingham*, *G*; *Toud.*, *A*, *D*, *T*₁, *T*₂. ⁴ *Om.* nostre, *A*, *D*, *T*₁, *T*₂. ⁵ *Om.* par fait et, *A*, *D*, *T*₁, *T*₂. ⁶ *For* qe . . . devoms, *subs.* q'ele ne deit attorner, *A*, *D*, *T*₁, *T*₂. ⁷ *For* celui . . . granté *subs.* Johan Bardolf, *A*, *Sim.*, *D*, *T*₁, *T*₂. ⁸ *perdroms*, *G*, *T*₂; *perdrioms*, *D*; *perdissons*, *A*, *T*₁. ⁹ *a*, *A*, *T*; *au*, *D*; *al*, *T*₂. ¹⁰ *Om.* et, *A*, *D*. ¹¹ *For* vous . . . tenaunt *subs.* et vous nous devez etc., *A*, *D*, *T*₁, *T*₂. A short speech by Toudeby is omitted here. See the third report. ¹² *Om.* par . . . reversioun, *G*. ¹³ *Ins.* similiter a, *A*, *D*, *T*₁, *T*₂. ¹⁴ *Om.* q'il conissoit, *A*, *D*, *T*₁, *T*₂. ¹⁵ *grantour*, *A*, *D*, *T*₁, *T*₂. ¹⁶ *For* ley et ses *subs.* voie des, *A*, *D*, *T*₁, *T*₂. ¹⁷ *ou*, *A*, *D*, *T*. ¹⁸ *Ins.* et, *A*, *D*.

46. BARDOLF *v.* BARDOLF.

I.

A case of *quid iuris clamat* in which she to whom the reversion was granted was within age. And because [she] could not be bound to warranty or acquittance it was awarded that the tenant should not attorn.

A man [and his wife] sued the *quid iuris clamat* against a woman who came into court etc. She was asked what right she claimed etc.

Hengham. The term for our life by deed and of the inheritance of the conusor. We tell you that attorn we need not, for [she] to whom the reversion is granted is within age, and cannot be bound to warranty nor acquittance so that if we were to attorn we should lose both. We ask judgment if we must attorn etc.

Malberthorpe. We are tenants of the chief lord of the same tenements in the right, and by statute; and he accepts us as tenants by force of the law, therefore you are our tenant.

*Friskenev.*¹ If she (who holds for life) were impleaded she would vouch her to whom the reversion belongs by reason of the reversion, and by reason of the reversion she would bind her to acquittance.

Malberthorpe. I answer you both as regards the warranty and the acquittance. As to the former, her action against her lessor is reserved to her by the deed which she has acknowledged. As to the latter, she can bring a writ of covenant against the grantor and deraign the acquittance [by way of²] damages. Moreover, I do not think that she would be able to use her writ of acquittance which is in the right, seeing that she has only term of life; and besides, they have acknowledged that the conusor has nothing, so that she could not in any way be the loser [by attorning].

BEREFORD, C.J. Although the conusor has nothing, that is no reason why the tenant should attorn, and whereas you say that the tenant could not use her writ of mesne, I ask why could she not, just as well as one who holds in dower?

Malberthorpe. Because she holds by deed, so that if she were

¹ Apparently a speech by Toudeby or Hengham is omitted here. See the third report.

² The translation here follows the text of *A*, *D*, and *T*.

ele¹ par vertue del fet portereit² soun bref de covenant, et recovereit³ damages, et issint ne puist pas femme tenaunte en douwere.⁴

Et pur ceo q'il ne se puist obliger *ut supra*, fuist agardé q'ele ne s'attournast pas etc.

II.⁵

Quid iuris clamat ou la tenante a terme de vie vynt en court e dit q'ele ne devoit attourner, pur ceo qe cely a qi la reversion fu granté fut deinz age. Et non attornait mes fu mys en delaye.

La reversion de tenemenz qe la dame tent a terme de sa vie si fut granté a Johan Bardolf et a E. sa femme⁶ qe siwerent le *quid iuris clamat* de faire la dame venir en court, qe vynt. Et demandé fut de la court quel dreit ele clama etc.

* * * * *

III.⁷

Quid iuris clamat. L'attournement countrepledé pur défaut de garrauntie, car cely a qi la reversion etc. fut deynz age. Et non attornait per iudicium.

En un *quid iuris clamat* porté vers une femme qe tent a terme de vie, la femme vynt en court, et dit q'ele⁸ clama tenir a terme de sa vie.

Malm. Nous prioms q'ele sei attourne.

Stanton. Savez rien dire pur qey vous ne devez attourner?⁹

Ing. A.¹⁰ qe granta ceste revercioun nous est tenuz a la garantie et a l'aquitance par ceo fet. Et cely a qy le grant est fet est dens age et ne se put obliger. Jugement.

Malm. Nous sumes tenant le chef seigneur de dreit par statut, par qey il covent q'il nous accepte par force de ley.

Toud. Si ele se attornast si perderéit ele la garantie et l'aquitance.

Frisk. Si ele fut enpledee ele vouchereit cely a qy la revercioun apent par reson de la reversion et par mesme la reson¹¹ le lierreit a l'aquitance.

Toud. Jeo ne voucherei jammes en ceo cas, mes jeo prieray eyde.

Malm. Quant a la garantie jeo vous respoin qe la garantie¹² ly

¹ *Ins.* purra, A, D, T₁, T₂. ² porter, A, D, T₁, T₂. ³ recoverir, A, D, T₁, T₂.
⁴ The report ends here in A, D, T. ⁵ From D, collated with A, T₁, and T₂.
 See note 1 page 99. ⁶ *Om.* sa femme, A, T. ⁷ From R collated with C, P, Q.
 Headnote from C. ⁸ *Om.* dit q'ele, C, P, Q. ⁹ This speech is omitted in C, P, Q. ¹⁰ Celi, P, Q. ¹¹ *For* par . . . reson *subs.* auxi, C, P, Q. ¹² *Om.* jeo vous . . . garantie, C, P, Q.

distrained by virtue of the deed she would bring her writ of covenant, and recover damages. This a woman holding in dower cannot do.

And because she could not bind herself (as stated above), it was awarded that she should not attorn etc.

II.

A case of *quid iuris clamat* where the tenant for a term of life came into court and said that she ought not to attorn, for she to whom the reversion was granted was within age. She did not attorn but was delayed.

The reversion of tenements which a lady held for the term of her life was granted to John Bardolf and [Christian] his wife, who sued the *quid iuris clamat* to make the lady come into court. She came and was asked by the court what right she claimed etc.

* * * * *

III.

A case of *quid iuris clamat*. The attornment was counterpleaded for want of warranty, for she to whom the reversion belonged was within age. And the tenant by judgment of the court did not attorn.

A *quid iuris clamat* was brought against a woman who held for the term of her life. She came into court and said that she claimed to hold for the term of her life.

Malberthorpe. We pray that she attorn.

STANTON, J. Can you say why you should not attorn?

Hengham. A. who granted us this reversion is bound to warrant to us and to acquit us by this deed; and she to whom the grant is made is within age, and cannot bind herself. Judgment.

Malberthorpe. We are tenants of the chief lord in the right by the statute, and therefore he must accept us as tenants by force of the law.

Toudeby. If she were to attorn, she would lose her warranty and acquittance.

Friskenev. If she were impleaded she would vouch him to whom the reversion belongs by reason of the reversion, and by the reason of the reversion she would bind him to acquittance.

Toudeby. I should never vouch in such a case, but I should pray aid.

Malberthorpe. As to the warranty, my answer is that warranty is

est reservé par le fet q'ele met avant ; et quant a l'aquittance ele put aver¹ son bref de covenant et dereyner l'aquitaunce par veye des damages. Estre ceo² ele ne put user bref de meen q'est en le³ dreit q'ele n'ad si noun a terme de vye.

Berr. Femme qe tent en dowere put user⁴ bref de meen. Pur qey nent tenant a terme de vie ?⁵

Malm. Si ele seit destreint ele put porter⁶ bref de covenant et recoverer damages en leu d'aquitaunce. Estre ceo il ount conu qe le conissour ne ad rien.

Berr. Mes q'il n'eit rien, ceo n'est mye encheson de attourner a un autre, mes pernet par ley q'ele ne⁷ deit attourner depus qe cely a qy la conisance est fet est dedens age et ne se put obliger a l'aquitaunce.

Par qey fut agardé q'ele ne se attournast mye.

IV.⁸

Quid iuris clamat suwy vers un tenaunt a terme de vie. La femme dit qe celui qe conust la fut tenu a la garrauntie et a l'aquitaunce par sa chartre q'ele mist avaunt, et celui a qi le cognisaunce est fet est deinz age et ne se put obliger etc. Jugement si a ly etc.

Malm. Si ele se attourne ele purra derreyner l'aquitaunce par voye de reversioun et voucher.

Toud. Vous dites mal ou le tenaunt a terme de vie s'attourne par assignement, ele pria⁹ eide et ne vouchera pas autre qe son feffour.

Fris. Mesqe ele se attourne il n'y ad nul meschef, qe la garde ly demurt vers son feffour par la chartre ; et quant a l'aquitaunce tut fut ele destreint ele ne purra mye user bref de meen einz recovereit damages par bref de covaunt.

Ber. Par bref de covaunt vers le lessour apres l'attournement ne put ele damages recoverir, mes ele put user bref de meen vers celui a qi ele est attourné s'il fut de plein age ; qe femme tenaunt en dowere purra user bref de meen ; dont a chacer la femme a attourner a celui qe ne la put acquiter serroit fort etc.¹⁰

¹ user, C, P, Q. ² For estre ceo subs. car, C, P, Q. ³ For en le subs. un bref de, P. ⁴ For put user subs. usera, C, P, Q. ⁵ In P this speech continues in the same words as the speech at the end of the next report, except that they are introduced by 'estre ceo.' ⁶ For put porter subs. portera, C, P, Q. ⁷ Om. ne, C, R. ⁸ From M. ⁹ An error for 'prie' or 'prieria.' ¹⁰ See note above.

reserved to her by the deed which she puts forward; as to the acquittance, she can have her writ of covenant and deraign the acquittance by way of damages. Moreover, she could not use her writ of mesne which lies in the right, for she has only term of life.

BEREFORD, C.J. A woman who holds in dower can use a writ of mesne. Why cannot a tenant for a term of life? ¹

Malberthorpe. If she were distrained she could bring a writ of covenant and recover damages in lieu of acquittance. Besides, they have acknowledged that the conusor has nothing.

BEREFORD, C.J. Even though he has nothing, that is no reason for her attorning to another. Take it as law that she ought not to attorn, seeing that she to whom the cognisance is made is within age and cannot bind herself to the acquittance.

Therefore it was awarded that she should not attorn.

IV.

A *quid iuris clamat* was sued against a tenant for a term of life. The woman said that the conusor was bound to warrant and acquit her by the charter which she put forward and that she to whom the cognisance was made was within age and could not bind herself etc. [She asked] judgment if to her etc.

Malberthorpe. If she attorn she can deraign the acquittance by way of reversion and can vouch to warranty.

Toudeby. You are wrong. Where a tenant for a term of life attorns by assignment, he prays aid; and he will vouch none other than his feoffor.

Friskeney. Even though she attorn, there is no harm, for the warranty remains against her feoffor by the charter; and as to the acquittance, even though she were distrained she could not use a writ of mesne but would recover damages by a writ of covenant.

BEREFORD, C.J. After attornment she could not recover damages by a writ of covenant against the lessor. But she could use a writ of mesne against her to whom she attorns, if she were of full age; for a woman holding in dower could use a writ of mesne. Therefore it would be very hard to drive the woman to attorn to one who could not acquit her.

¹ See note 5 on opposite page.

V.¹

Ou le baron e sa femme qe furent de deinz age porterent cesti bref vers femme qe tient en dowere.

Johan le fiz Thomas Bardolf e Maude sa femme porterent le *quid iuris clamat* vers une Alice a conustre quel droit ele cleime en le maner de N.

Heng. (pur Alice) dist qe Thomas Bardolf qe granta la reversion de ceo maner a Johan e M. etc. lessa ceo maner a ceste Alice a terme de sa vie e obligea lui e ces heirs a la garantie aquitance et defense par son fet qe cy est. E demandoms jugement desicom J. e M. est dedeinz age e durrant son nounage tiele siurté a nous ne pount fere, si a eux devom attorner.

Frisq. Reversion si lie homme a la garantie e a l'aquitance, *ergo*, si J. et M. soient seisiz del attornement, par tant assez sunt il liez a la garantie, *ergo* etc.

Touth. Par reversion ne puet homme nent vouchier a garant, einz puet prier eide, par quei vostre response etc.

Malm. Nous avom de ley qe attornement del demene ne de services ne barre mie le tenant q'il n'avera la garantie vers le conissour *ergo* etc. Et quant a l'aquitance qe est en le dreit ele qe est de si feble estat ne puet nent dereigner etc., mes si ele soit distreint del chief seignour, eit sun bref de covenant vers sun lessour la quele accion a lui est reservé tut attorné ele, *ergo* etc.

Bereford. Ne puet ele mie dereigner l'aquitance?

Malm. Noun, Sire, qar ele n'ad qe terme de vie.

Ber. Femme en dowere ele n'ad qe terme de vie e ele puet user bref de meen. Et ceo avom veu diz foiz cienz.

Et pus fut Maude demandé. Et respondit par attorné.

Bereford. Qe resceut l'attorné?

Malm. Le cirograffer pur resceivre sa partie de la fin.

Bereford (a.T.) Fetes venir vostre femme cienz a iij semeines de Pasche, e vous Alice gardez mesme le terme.

A queu jour Maude vient e les parties trestouz etc.

¹ From Y (fo. 207 v°).

V.

Where a husband and his wife who were within age brought the *quid iuris clamat* against a woman who held in dower.

John the son of Thomas Bardolf and [Christian] his wife brought the *quid iuris clamat* against one [Cecily] to acknowledge what right she claimed in the manor of N.

Hengham (for Cecily) said that [Joan] Bardolf, who granted the reversion of this manor to John and [Christian] etc., leased it to this [Cecily] for the term of her life, and bound herself and her heirs to warranty acquittance and defence by her deed which is here. And seeing that [Cecily is¹] within age and during her non-age such assurance cannot make to us, we ask judgment if we ought to attorn to them.

Friskenev. Reversion binds a man to warranty and acquittance. Therefore if John and [Christian] be seised of the attornment, they are thereby sufficiently bound to the warranty, therefore [she should attorn].

Toudeby. A man cannot vouch to warranty through a reversion, but he can pray aid. Therefore your answer etc.

Malberthorpe. We take it as law that attornment neither of demesne nor of services bars the tenant from having warranty against the conusor. Therefore etc. As to acquittance which lies in the right; she whose estate is so feeble cannot deraign it etc. But if she were distrained by the chief lord, she has her writ of covenant against her lessor, which action is reserved to her although she attorn. Therefore [she should attorn].

BEREFORD, C.J. Cannot she deraign the acquittance?

Malberthorpe. No, Sir, for she has only a term for life.

BEREFORD, C.J. A woman in dower has only a term for life, and can use a writ of mesne. We have seen that here half a score of times.

And then [Christian] was called and she answered by attorney.

BEREFORD, C.J. Who admitted the attorney?

Malberthorpe. The chirographer, in order that he might receive her part of the fine.

BEREFORD, C.J. (to John). Make your wife come here three weeks after Easter. And do you [Cecily] keep the same term.

At that day [Christian] came and all the parties etc.

¹ It is not stated in the record that Christian's husband was within age.

Hervi. Savez rien dire, pur quei vous ne devez attorner ?

Herle. Sire, Oyl. Thomas etc. nous est tenuz a la garrantie e a l'aquitance vers totes gentz, *ut supra*.

Malm. Si nous séoms seisi de voz services, il nous covient garranter e aquiter etc.

Herle. Qe nous puet fere de ceo siurté del houre qe Maude est de deinz age ?

Malm. Sun baroun est de plein age e puet fere le homage etc.

Ber. q'il agardereit qe le tenant attornereit de sun seignur, sanz ceo qe celui a qi la reversion fust granté lui poeit fere altresí bone siurté com il avoit de son seignur, *quasi diceret* etc.

Malm. Sire, homage si est cause de lier a la garrantie, e seisin des services si est cause de lier a l'aquitance.

Ber. N'est Maude de deinz age ? Coment^e liereit homage ou seisine des altres services cele qe est de deinz age etc. *quasi diceret* etc. qar jeo vey qe attornement si est com un covenant. Mes veiez si covenant eust prist entre vous ore, si M. quant ele soit de plein age serreit lié par ceo covenant ? *quasi diceret*, non.

Bereford. Nous aviseroms de ceste matir ; e gaitez voz jours etc.

Notes from the Record.

I.

De Banco Rolls, Easter, 3 Edw. II. (No. 181), r. 30d, Norfolk.

John Bardolf and Christine his wife give half a mark for licence to agree with Joan the daughter of Thomas Bardolf of Spikesworth on a plea of covenant of tenements in Fretenham, and of the advowson of the church of the same vill. And let them have the chirograph by J. Claver counter.

II.

Dé Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 76d, Norfolk.

Cecily the widow of Thomas Bardolf is in mercy for several defaults etc.

The sheriff was ordered that he cause to come here at this day the afore-said Cecily to acknowledge what right she claims in the manor of Fretenham¹ and the advowson of the church of the same vill, which Joan the daughter of Thomas Bardolf of Spikesworth granted here by fine etc.² to John Bardolf and Christian³ his wife and the heirs whom John should beget of the body of Christian.

¹ Frettenham is near Norwich. ² *Feet of Fines*, Case 162, File 129, No. 336.

³ This lady is here called 'Cristiana,' but in the *licencia concordandi* she is called 'Cristina.' It is therefore interesting to notice that in Hil. term, 4 Edw. II., a writ of formedon in the descender was abated because the tenant's wife was called 'Cristiana,' instead of 'Cristina' (*De Banco Rolls*, No. 184, r. 210).

STANTON, J. Can you say why you should not attorn?

Herle. Sir, yes. [Joan] etc. is bound to warrant and acquit us against all men (as stated above).

Malberthorpe. If we were seised of your services, it would be necessary for us to warrant and acquit etc.

Herle. How can she assure us of that seeing that [Christian] is within age?

Malberthorpe. Her husband is of full age and can do the homage etc.

BEREFORD, C.J. [asked] how he could award that a tenant should be attorned by his lord unless he to whom the reversion was granted could give him as good assurance as he had from his lord; as if to say [that he would not make such an award].

Malberthorpe. Sir, homage is a cause of binding to warranty, and seisin of services is a cause of binding to acquittance.

BEREFORD, C.J. Is not [Cecily] within age? How could homage or seisin of the other services bind her who is within age? They could not; for I think that attornment is like a covenant. But do you think that if a covenant were made between you now, [Christian] when she came to her full age would be bound by that covenant? She would not.

BEREFORD, C.J. We will be advised in this matter; and do you wait your days etc.

Notes from the Record (*continued*).

And now come as well John and Christian by their attorneys as Cecily in her own person etc. And Cecily being asked by the justices what right she claims in the manor and advowson etc., says that she claims frank tenement in the same for the term of her life by the demise of Joan who demised the manor and advowson to her to hold for all her life of Joan and her heirs by the service of a rose a year etc., and of doing on behalf of Joan and her heirs to the lords of that fee all other services which to the tenements belong; and Joan granted for herself and her heirs that they would warrant acquit and defend the whole manor together with the advowson of the church to Cecily for the term of her life as aforesaid against all people. And Cecily produces a part of a certain writing, indented between them which witnesses this etc. And she says that she is distrained by the earl of Lancaster for the homage of Joan whereupon, since Joan and her heirs are bound by the writing to warrant acquit and defend the tenements to Cecily for all her life, and since John and Christian are not present in court to make such warranty and acquittance to her, and no tenements remain to Joan etc. whereby she can make such warranty or acquittance etc.,

Notes from the Record (*continued*).

she asks judgment, if of her fealty to them she ought to attorn to them thereof at present.

A day is given to them here on the octave of Hilary and the attorney of John and Christian is told to cause them to come here then in their own persons etc. if etc.

Afterwards at that day came as well John and Christian by John of Morle the attorney of Christian, admitted for her before the chirographer, as also Cecily; and Cecily claims that Christian is within age etc. and asks that she may be seen in court. And because it is expedient that the court here be certified thereof, a day is given them here three weeks after Easter for hearing their judgment, on the ground that not yet etc. And John Bardolf is told to have Christian his wife here at that term in her own person etc.

Afterwards at that day came the parties in their own persons, and a day is given them here, the quindene of St. Michael for hearing their judgment etc. on the ground that not yet has judgment etc.

Afterwards at that day came as well John Bardolf as Cecily, and Christian came not. And it is witnessed here that Christian is dead. And upon this a day is given to John and Cecily for hearing their judgment here on the octave of St. Martin as from day to day etc. on the ground that judgment has not yet etc.¹

* * * * *

Afterwards on that day, to wit three weeks after Easter 6 Ed. II., came as well Cecily as John Bardolf in their own persons and likewise Joan by her attorney. And Cecily says that she is ready to attorn to John of her fealty in this behalf, if John will bind himself and his heirs to acquit her of the homage and relief aforesaid etc. And upon this John granted for himself and his heirs that they will warrant and acquit Cecily all her life of homage and relief aforesaid, and the whole manor according to the form of Joan's

47. ANON. v. EARL OF HEREFORD.²

Replegiari et avowerie fet sur soun verrey tenaunt. L'autre dit q'il ne poeit sur ly etc. car il ly avoit feffé pus statut a tenir etc. et il avoit tendu lez services.

Un Wauter porta soun *replegiari* et dit qe le count de Herford atort prist ses avers.

¹ Process is continued until three weeks after Easter 6 Edw. II. ² This report is found in *C, P* and *Q* only, and is probably misplaced. If the Howard who is an advocate in this case was the same person as the judge of that name, it must have been heard before October 1297, when he was raised to the Bench, and after November 1294, when Bereford became a judge.

Notes from the Record (*continued*).

writing. And upon this Cecily attorned to John of her fealty here in court. Therefore let the fine thereof between them be engrossed etc.

III.

Feet of Fines, Case 162, File 129, No. 336.

This is the final agreement made in the king's court at Westminster three weeks after Easter 3 Edw. II. before William of Bereford Lambert of Trikyngham Hervey of Stanton John of Benstede Henry le Scrope justices. Between John Bardolf and Christian his wife plaintiffs and Joan daughter of Thomas Bardolf of Spikesworth deforciant of the manor of Frettenham and the advowson of the church of the same town which Cecily the widow of Thomas Bardolf holds for a term of her life and afterwards on the octave of St. John the Baptist 6 Edw. II. there granted and recorded after the death of Christian before William of Bereford Lambert of Trikyngham John of Benstede Henry le Scrop William Inge and John Bacon justices and other lieges of the king then and there present. Between John Bardolf plaintiff and the aforesaid Joan of the aforesaid manor and advowson and whereupon a plea of covenant was summoned between John and Christian and Joan in the aforesaid court to wit, that Joan granted to John and Christian the manor and the advowson which Cecily held for the term of her life by the demise of Joan on the day when this agreement was made and which to Joan and her heirs ought to revert after the death of Cecily should remain entirely to John and Christian and the heirs whom John should beget of the body of Christian. To hold of the chief lords of that fee by the services which to that manor and advowson pertain for ever. And if it happen that John die without an heir of the body of Christian begotten then after the decease of John and Christian the manor and advowson shall remain entirely to the right heirs of John to hold of the chief lords of that fee by the services which to that manor and advowson pertain for ever.

47. ANON. v. EARL OF HEREFORD.¹

Replevin. The avowry was made upon the lord's very tenant. The plaintiff said that the lord could not avow upon his very tenant, for the latter had enfeoffed him after the statute to hold etc. and he had offered the services.

One Walter brought his replevin and said that the earl of Hereford had wrongly taken his beasts.

¹ See note 2 on opposite page.

Herle. Nous avowoms la prise bon et dreiturele sur un Willem Hautemer qe tent de nous iiij maners par ij feez de chivaler et par les services de xx souz dez queux services etc. par mye la mayn Willem com par my la mayn etc. et pur tant etc.

Howard. A cest avowere ne devez avenir, qe le dit Willem Hautmer enfeffa cesti Wauter de un de lez¹ iiij maners longe tens avant la prise fet a tenir de chef seignurages de fee; et Wauter approcha le count com chef seignur et ly tendy homage et fealté et il ne le voleit recevoir, mes la quarte partie de la rente cum appendant a sa porcion paya il au baillif le count, dount de pus q'il est tenaunt le counte et fut le jour de la prise fet, jugement si sur autre etc.

Warr. Vous avez connue qe le count ne receust pas soun homage ne sa fealté, mes il paya sa porcion de la rente au baillif au² counte par quei qe le counte ne ly ad pas uncore resceu cum soun tenaunt, car payement de rente ne fet pas tenant.

Howard. Quant il fut feffé etc. si fut il tantost tenaunt le counte qe est chef seignur par force de statut, donqe tut ne voleit le counte soun homage receyvre, si fut il soun tenant par force del ley.

Hyngh. Nous avoms avowé pur arrerage de nostre tenant avant qe Wauter riens n'avoit en nul dez maners, par quei sur cely en qi tens lez arrerages fuerent encruz ou sur sez heirz et nent sur estrange covient qe nous avowoms, qe autrement ensewereit qe par purchaz d'un estrange perdreit les seignur sez arrerages.

Howarde. Vous avowez sur Willem et ditez q'il tent de vous le maners enterement; ceo ne poez dire, qe Wauter est vostre tenaunt et fut avant la prise fet del quarte maner cum jeo avant pus. Jugement.

Warw. Si nous avowassoms pur lez principal services, vous deissez ben, mes nous avowoms pur arrerages de rent et nent pur le princepale service et ceo avant vostre tens, qe del princepal sumes tut a un, qe vous avez dit qe vous avez payé pur vostre porcion, par tant ne poez toller³ de⁴ nous noz arrerages encruz avant vostre tens.

Berr. Jeo pose qe le counte vous ust resceu com soun tenant pur vostre porcion et il seisi pleynement de voz services, serreit ceo response q'il fut barré par taunt de sez arrerages encruz en tens vostre feffement⁵? Certes nanyl. Ne covent il donques qe il avowe sur soun

¹ For de lez *subs.* un mees, Q. ² For au *subs.* le, Q. ³ celer, Q.
⁴ *Ins.* de, Q. ⁵ feffour, Q.

Herle. We avow the taking as good and lawful upon one William Hautemer who holds four manors of us by two knights' fees and by the services of twenty shillings of which services [we are seised] etc. by the hand of William as by the hand etc. and for so much etc.

Howard. To this avowry you ought not to come, for the said William Hautemer enfeoffed this Walter of one of the four manors a long time before the taking was made, to hold them of the chief lords of the fee; and Walter approached the earl as chief lord and tendered him homage and fealty, and the earl refused to receive them, but Walter paid the fourth part of the rent as appendant to his share to the bailiff of the earl. Wherefore seeing that Walter is the tenant of the earl, and was so on the day when the taking was made, we ask judgment if upon any other etc.

Warwick. You have acknowledged that the earl did not receive his homage nor his fealty, but you say that Walter paid his share of the rent to the bailiff to the earl. Wherefore the earl has not yet received him as his tenant, for payment of rent does not make a tenancy.

Howard. When he was enfeoffed he forthwith became, by force of the statute, tenant to the earl who is the chief lord. Although, then, the earl would not receive his homage, Walter became his tenant by force of law.

Hengham. We have avowed for the arrears of our tenant, before Walter had anything in any of the manors, and therefore we must avow upon him in whose time the arrears accrued or upon his heirs, and not upon a stranger, for otherwise it would follow that by the purchase of a stranger the lord would lose his arrears.

Howard. You avow upon William and say that he holds the manors of you in their entirety. That you cannot say, for Walter is, and was before the taking was made, your tenant of the fourth manor, as I before alleged. Judgment.

Warwick. If we had avowed for the principal services, you would have said what was right. But we avowed for arrears of rent and not for the principal service, and it was due before your time. As to the principal service, we are quite agreed, for you have said that you paid rent for your portion, therefore you cannot deprive us of our arrears which accrued before your time.

BEREFORD, C.J. Suppose the earl had received you as his tenant as regards your portion, and he were fully seised of your services, would it be an answer that by such receipt and seisin he was barred of his arrears, which had accrued at the time of the feoffment? Certainly not. Would it not, then, be necessary for him to avow upon the

tenaunt qe ly deit lez arrerages ou sur soun heir, mes si ren seit arrere pur vostre porcion a vostre tens il ne put sur autre qe sur vous avower de pus qe vous estes soun tenant etc.

48. RANDOLF v. BAVENT.

I.¹

Replegiari, ou il avowa pur une defaute ou il dist q'il duist siwite a sa court etc. sour un des joynt tenaunts etc. et pria ayde del autre et fuist ousté, qe celui qe pria avoit fee et l'autre n'avoit qe terme de vie. Et le tenaunt fust purchasour et l'auncestre cely qe awoua.²

Wauter Randolf se pleint qe Roger Bavent atort prist ses avers etc.

*West.*³ R. de B. avowe⁴ etc. par la resoun qe W. de J. tient de lui un mees etc. par homage feauté et par les services de iiij souz par an et par escuage etc.⁵ et par siwite a sa court etc. de iij symeines etc. des queux services Roger etc.⁶ par my⁷ etc., le quel W. hors de sa seisine enfeffa mesme cestui W. q'ore se pleint⁸ par fourme de statut etc.; le quel W. se attourna a nous de la rente et de sa feuté. Et pur ceo q'il fist defaute en⁹ nostre court etc. tenu etc.¹⁰ si avowé etc.

Ing. Sire, ceux tenementz furent¹¹ en la' seisine un R. q'enfeffa l'avaudit W. de J. a tenir de luy par feuté et par les services de iiij souz par an pour toux services,¹² le quel R. graunta ceux services a un W. pere mesme cestuy R. q'ore avowe, par quel graunt W. de J.¹³ s'attourna etc.; puis W. de J. enfeffa W. Randolf q'ore se pleint et un R. Randolf a avoir et tenir a W. et R.¹⁴ et a les heirs W. par fourme de statut¹⁵ etc. Et pur ceo qe W. n'ad¹⁶ en ceux tenementz mesqe¹⁷ joyntment ove R., nous prioms aide de luy.

Herle. Aide ne devetz avoir qe vous estes soul pleint¹⁸; et¹⁹ nous avowoms sour vous soul, et avoms lié la seisine par my vostre mayn

¹ From *B* collated with *A*, *D*, *G*, *T*. Abridged reports of little value occur in *M* and *P*. The headnote is from *B*. ² The headnote in *G* has the following additional words: Et credo qe le pleintif se put descharger par l'averement q'il tendit pur ceo q'il est estranger purchasour et ne put pas user le *ne uxexes*, ut patet in termino Michaelis anno xvij en un *replegiari*. ³ *Om.* *West.*, *A*. ⁴ avowa, *D*, *G*. ⁵ *Ins.* uidelicet iiij souz al escu etc., *A*, *D*, *T*. ⁶ *Subs.* fust seisi, *A*, *D*, *T*. ⁷ *Ins.* la mayn Willem com, *A*, *D*, *T*. ⁸ *Ins.* etc., *A*, *D*, *T*. ⁹ a, *A*, *D*, *G*, *T*. ¹⁰ *Ins.* tiel jour etc. et pus chesqun jour jesques a jour de la prise, *A*, *D*, *T*. ¹¹ *Ins.* en asqun temps, *A*, *D*, *T*. ¹² *Ins.* et, *A*, *D*, *T*. ¹³ *Ins.* tenaunt, *A*, *D*, *T*. ¹⁴ *Om.* a avoir . . . R., *A*, *D*, *T*. ¹⁵ *Ins.* a tenir, *A*, *D*, *T*. ¹⁶ *Ins.* rien, *A*, *D*, *T*. ¹⁷ si noun, *A*, *D*, *T*. ¹⁸ pleyntif, *D*. *Ins.* etc., *A*, *D*, *T*. ¹⁹ *Subs.* si, *A*, *T*.

tenant who owes him the arrears or upon his heir? But if anything were in arrear for your portion in your time, he could not avow upon any other person than upon you, since you are his tenant etc.

48. RANDOLF *v.* BAVENT.

I.

A case of replevin in which the lord avowed for a default, and said that the tenant owed suit to his court etc. The avowry was upon one of two joint tenants who prayed aid of the other but was ousted from his aid, for the tenant who prayed had the fee and the other tenant had only a term for life. The tenant [who prayed aid] was the purchaser, and the ancestor of the avowant.¹

Walter Randolf complained that Roger [de] Bavent wrongly took his beasts etc.

Westcote. Roger de Bavent avows etc. for the reason that William [le Ysmonger] held of him one messuage etc. by homage fealty and the service of four shillings a year, and by escuage etc. [to wit, four shillings for the shield etc.] and by suit to his court etc. from three weeks to three weeks etc. of which services Roger etc. [was seised] by William etc. This William out of his seisin enfeoffed this Walter, who now complains, by the form of the statute etc. Walter attorned to us of the rent and his fealty. And because he made default at our court held etc. Roger avows etc.

Hengham. Sir, these tenements were sometime in the seisin of one [Neal], who enfeoffed the said William le Ismonger, to hold of him by fealty and by the service of four shillings a year for all services. This [Neal] granted these services to one W. the father of this Roger who now avows. On this grant William le Ismonger attorned etc., then William le Ismonger enfeoffed Walter Randolf, who now complains, and one R. Randolf to have and to hold to Walter and R. and the heirs of Walter by the form of the statute etc. And because Walter has nothing in these tenements save jointly with R. we pray aid of R.

Herle. Aid you ought not to have, for you alone complained, and we avow upon you alone, and we have laid the seisin by your sole

¹ The last sentence is not warranted by the report.

soul; et le fait qe vous mettet avaunt vous fait soul tenaunt de ¹ dreit. Jugement etc.

Migg. Coment qe nous sumes soul pleint ² de ³ nos avers pris, ne pur qaunt vous avietz avowé pur chose real de quei vous vietz ⁴ la tenaunce chargier, ⁵ a quei ⁶ nous soul ne poms estre partie. Jugement si de lui qe puist ove nous chargier et deschargier ne devoms aide avoir.

Herle. Vous mesmes fetes vostre plainte malveis, en taunt qe vous alleggetz noun pouer a ceo plee pleider etc. Et d'autrepart vous estes soul attourné a nous de vos services.

Malm. ⁷ Mesqe nous vousissoms ⁸ soul desclamer ⁹ etc. vous n'averetz mye davantage par vostre bref de droit a demaunder etc. ¹⁰ par quei il semble qe nous ne poms estre ¹¹ a vous partie a chargier ne deschargier en le droit saunz R. Jugement, si ¹² de lui etc.

Ber. Il vous dit qe vous soul estes attourné a lui de vos services; de quei dounqe servireit l'eide, ¹³ et ¹⁴ desicome ¹⁵ vous soul estes attourné, ¹⁶ et ¹⁷ soul tenaunt vous ad accepté etc. ?

Fr. Il lye la seisine ¹⁸ de feauté et de la rente par my vostre mayn et la quele feuté puist estre fait pur ambedeux.

Ber. Ceo ne dy jeo mye.

Malm. Si W. Randolf pledast et joynsist l'enqueste sour la seisine des services et l'enqueste passast ¹⁹ encountre li, jeo n'entenc mye qe par my cele enqueste la tenaunce serroit chargié, qe R. apres sa mort poeit ²⁰ joyndre un autre enqueste qe par aventure dirreit le revers. ²¹ Jugement si aide ne etc.

Ber. En meint cas le tenaunte se porra deschargier par soun pleder de quei eide ne serroit pas grauntable a la requeste celui que la prie. ²²

Et puis fuist ousté del eide par *Ber.*, (quia querens est solus attornatus de serviciis etc. et solus tenens de iure).

Malm. Pur siwite ne puist ²³ il ²⁴ destresce avower qe ceux tene-

¹ du, *A, D, T.* ² pleyntif, *D.* *Ins.* etc. *D, T.* ³ sic. *A, D, T.*; et, *B, G.* ⁴ liez, *A, T,* biez, *D,* biet, *G.* ⁵ *Ins.* Et del heure qe nous tenoms en commune ove Roger la quel tenaunce a charger, *A, D, T.* ⁶ *Om.* a quei, *A, D, T.* ⁷ *Migg.*, *A, D, T.* ⁸ eussoms, *A,* fussoms, *D,* ussoms, *T.* ⁹ desclame, *A, D, T.* ¹⁰ *Subs.* lez tenemenz en demene, *A, D, T.* ¹¹ serroms, *D, T,* serrioms, *A.* ¹² *Ins.* eyde, *A, D, T.* ¹³ *Ins.* qar vous luy chacerez a meschief, qe s'il avowast sur vous deux, vous luy ousterez de s'avowreye, *A, Sim. T.* ¹⁴ *Om.* et, *A, G, T.* ¹⁵ pur ceo qe, *A, T.* ¹⁶ *Om.* a lui . . . attourné, *Ins.* etc., *D.* ¹⁷ *Ins.* com, *A, D, T.* ¹⁸ *For* Il . . . seisine, *subs.* Il dient q'il est seisi, *A, D, T.* ¹⁹ eust passé, *A, D, T.* ²⁰ ne purra, *A, T,* ne purreit, *D.* ²¹ *Ins.* de ceo q'avaunt fust trouvé etc. et issint une enqueste defreit par cas une aultre, *A, D, T.* ²² *For* celui que la prie *subs.* q'il le priast, *A,* celui que la priast, *D,* q'il le priast, *T.* ²³ devetz, *A,* poez, *D, T.* ²⁴ *Om.* il, *A, D, T.*

hand, and the deed which you put forward makes you sole tenant in the right. We ask judgment etc.

Miggeley. Although we alone complained of our beasts being taken, nevertheless you have avowed for a thing real, wherewith you wish to charge the tenancy, and to this we alone cannot be party. We ask judgment if we ought not to have aid of him who with us can charge and discharge [the tenancy].

Herle. You yourselves make your complaint bad, by alleging no power to plead this plea etc. Besides you alone attorned to us of your services.

Malberthorpe. Even if we alone wished to disclaim etc. you could not take advantage of our disclaimer to demand the tenements [in demesne] by writ of right. Wherefore it seems that we cannot be a party to you for charging or for discharging the tenements in the right without R. We ask judgment, if we ought not to have aid of him.

BEREFORD, C.J. He tells you that you alone attorned to him of your services. Of what use, then, would the aid be to you, seeing that you alone attorned and he has accepted you as sole tenant?

Friskenev. He lays the seisin of the fealty and the rent by [our] hand and the fealty can be done for both.

BEREFORD, C.J. That I do not say.

Malberthorpe. If Walter Randolph pleaded and joined an inquest on the seisin of the services, and the inquest passed against him, I do not think that by that inquest the tenancy would be charged, for R. after Walter's death might join another inquest which perchance would give a contrary verdict. We ask judgment if aid he ought not to have.

BEREFORD, C.J. In many a case the tenant could discharge himself by his pleading, where¹ aid would not be granted at the request of him who prayed it.

And then the plaintiff was ousted from his aid by BEREFORD, C.J., because he alone attorned of the services etc. and was sole tenant in the right.

Malberthorpe. For suit [you] cannot avow the distress, because

¹ The meaning of the speech is doubtful. The 'de quei' may perhaps refer to the word 'cas,' but if so it is written in error for 'en quei.'

mentz furent en ascun temps en la seisine ¹ un R. q'enfeffa ² W. de J., par qi mayn vous lietx vostre seisine, a tenir de luy mesme par les services *ut supra* saunz siwite faire ³ avaunt statut; et puis mesme celui R. graunta ceux services a un W. ⁴ par quel graunt W. s'attourna a W. ⁵ pere R. qe avowe etc. et W. de J. enfeffa W. Randolfe et R. Randolf ⁶ a tenir des chiefs seigneurages etc. Et desicome R. le primer feffour ne poeit ⁷ encontre soun fait ceste siwite demaunder ne W. ⁵ vostre feffour unges de ceste siwite ne fuist seisi ne vous ne poietz autre estat clamer qe vostre feffour ne out, jugement si pur siwite etc.

Herle. Nous avoms lié nostre seisine par my la mayn W. de J. de qi les tenementz furent purchasé. Et vous ne devetz estre de meillour condicioun qe W. qe les tenementz ⁸ tyent chargietz. Jugement etc.

Malm. Nous avoms moustré par fet qe les tenementz estoient en la seisine W. deschargietz et par le fet R. soun feffour et vous ne poietz moustrer ⁹ puis cel temps seisine ne ¹⁰ autre chose par quei il doit estre chargé. Jugement. Et d'autrepart vous estes purchassours de la seigneurie et ne poetz ¹¹ plus haut estat qe ¹² vostre feffour pleder. Et desicome il ne fuist unges de la siwite seisi, jugement etc.

Ber. S'il ne porra par tiele ¹³ voie deschargier, il demorra chargé aremenant, qil ne puist mye le *ne vexes* user.

Herle. Sire, la ou il dyent qe R. enfeffa W. de J. saunz sute fere, nous vous dyoms qe W. tient mesme les tenementz ¹⁴ par siwite. ¹⁵ Jugement etc.

Malm. L'estat qe vous avietz si est d'estraunge ¹⁶ purchassour e desicome vostre feffour ne fuist unges seisi de la sute nous ne entendoms mye qe au title de ¹⁷ plus bas feffement etc. qe n'est etc. ¹⁸ ay jeo mestier a pleder etc. ¹⁹

¹ *Ins.* ut supra, A, D, G, T. ² qi de ceo enfeffa, A, D, T. ³ *Ins.* et, A, D, T. ⁴ *Subs.* Valentin, A, D, T. The words 'pere R' are here inserted in error on an erasure. ⁵ *Subs.* Valentin, A, D, T. *Ins.* de ses services sanz nule seute fere, puis Valentin granta la seigneurie et les services al avaunt dit W., T, *Sim.*, D, *Sim.*, A. ⁶ *Ins.* etc. A, D, T. ⁷ purra, A, T, purreit, D. ⁸ *Om.* tenementz, A, D, T. ⁹ *Ins.* par fait qe, A. *Ins.* qe, D, T. ¹⁰ ou, A, D, T. ¹¹ *Ins.* a, A, D, T. ¹² *Ins.* l'estat, D. ¹³ cele, G, ceste, A, D, T. ¹⁴ *Ins.* e, A, D, G, T. ¹⁵ *Ins.* etc., A, D, T. ¹⁶ com estraunge, A, D, T. ¹⁷ *Om.* de, G. ¹⁸ *For* au title . . . etc. *subs.* a title plus haut, A, D, T. *Om.* feffement . . . etc., G. ¹⁹ *Add.* Et sic remanet, A, D, T.

these tenements were sometime in the seisin of one [Neal] (as above stated), and this [Neal] before the statute enfeofed William le Ysmonger, by whose hand you lay your seisin, to hold of [Neal] by the services (as above stated) without doing suit. Then this [Neal] granted the services to one Valentine [upon which grant William attorned to Valentine of his services without doing suit. Then Valentine granted the seignoury and the services to W.] the father of Roger who avows etc. William le Ysmonger enfeofed Walter Randolf and R. Randolf to hold of the chief lords etc. Seeing that [Neal] the first feoffor could not demand this suit against his own deed, and that [Valentine] your feoffor never was seised of this suit and that you cannot claim any higher estate than that which your feoffor had, we ask judgment if for suit etc.

Herle. We have laid our seisin by the hand of William le Ismonger from whom the tenements were purchased. You ought not to be in a better condition than William, who held the tenements charged. Judgment etc.

Malberthorpe. We have shown by deed that the tenements when in the seisin of William le Ismonger were discharged, and this by the deed of [Neal] his feoffor. You cannot show seisin since that time nor anything else whereby [they] ought to be charged. We ask judgment. Moreover you are purchaser of the seignoury and cannot plead a higher estate than your feoffor's. Seeing that he was never seised of the suit, we ask judgment etc.

BEREFORD, C.J. If he cannot discharge himself in this way, he will remain charged henceforth, for he cannot use the *ne uexes*.

Herle. Sir, whereas they say that [Neal] enfeofed William le Ismonger without doing suit, we tell you that William held these same tenements by suit. We ask judgment etc.

Malberthorpe. The estate which you have is from a strange purchaser, and seeing that your feoffor never was seised of the suit we do not think that to a title by a more recent feoffment we need plead etc.

II.¹

Ou eide fut prié de celui qe fut tenant del franc tenement e ne fut nent receu.

Wauter Randolf se pleint qe Thomas Bavent atort avoit pris sun boef. T. avowa la prise etc. par la reson qe un W. Ismoingg' tint de lui un mees e ij bovez de terre en C., dount le lieu ou la prise fut fete etc., par homage fealte e escuage, *seil.* etc. e suite a sa court de C. de iij semeines; le quel W. enfeffa cesti Wauter par forme del statut a tenir des chiefs seignurs; e pur la suite arrere a sa court de C. tenu le Lundy prochein apres la feste de Seint Johan etc. l'an etc. e pur les autres suites au courz tenuz pus jusques jour de la prise etc. E issi avowe il etc.

Denham. W. dona ceux tenemenz au dit Wauter e a un T. de Straton e a les heirs Wauter a tenir etc. par ceste chartre (e mist sa chartre a la court), sanz qi nous ne pooms ceux tenemenz charger ne descharger. E prioms eide de lui.

Touth. Nous poeimes avoir abatu s'avowerie, si nous vousissoms.

Pass. Vous come soul tenaunt avez fet la deliverance. Jugement etc.

Herle. Si nous grantissoms ceste aide, ceo abatereit nostre avowerie la quele vous avez affermé pur bone.

Denham. Si Wauter fut mort, vous ne porriez mie avowerie fere sur le heir Wauter vivant T., par quei l'eide est necessaire.

Alio die rehercerent ceo qe primes fut dit.

Herle. Nous dioms qe eide ne devez avoir, qe vous estes feffé a tenir des chief seignurages par forme de statut. Par vertue de quel feffement vous mesme estes attorné a nous de vostre fealté e de touz vos autres services estre la suite. E nous seisi par my la main W. vostre feffour. Jugement, si ore pur suite arrere ne pooms avowerie fere.

Ber. a Denham. Vous estes attorné soul a eux de vostre feauté e de vos autres services e issi avez encombré vous meismes. Quidez qe vous puissez ore disacombrer de ceo ke vous estes attorné de vostre eindegre? Kar si vous ne eussez attorné il ne poent jammes avowerie fere sur vous soul sanz T. de Stratton, qe est joint feffé.

¹ From Y (fo. 175 r").

II.

Where aid was prayed of him who was a tenant of the frank tenement ; and the tenant was not received.

Walter Randolf complains that [Roger de] Bavent wrongly took his ox. [Roger] avowed the taking etc. for the reason that one William le Ismonger held of him one messuage and two [virgates] of land in [Wysteneston] whereof the place where the taking was made is parcel, by homage fealty and escuage, to wit, etc., and suit to his court of [Wysteneston] from three weeks to three weeks, which William enfeoffed this Walter by the form of the statute to hold of the chief lords ; and for suit arrear to his court of [Wysteneston] held on the Monday after the feast of St. John, the year etc. ; and for other suits to the courts held afterwards until the day of the taking etc. And so he avows etc.

Denham. William gave these tenements to the said Walter and one T. de Stratton and the heirs of Walter, to hold etc. by this charter. (And *Denham* produced his charter to the court.) And without T. we can neither charge nor discharge these tenements. And we pray aid of him.

Toudeby. We could have abated his avowry if we had wished.

Passeley. You [caused the] deliverance [to be made] as sole tenant. Judgment etc.

Herle. If we were to grant this aid, that would abate our avowry which you have affirmed as good.

Denham. If Walter were dead, you could not avow upon his heir in the lifetime of T., wherefore the aid is necessary.

On another day they rehearsed what had been said before.

Herle. We say that you ought not to have aid, for you are enfeoffed to hold of the chief lords by the form of the statute. By virtue of the feoffment you yourself attorned to us of your fealty and all your other services except the suit, and we are seised by the hand of William your feoffor. Judgment if we cannot now avow for suit arrear.

BEREFORD, C.J., to *Denham*. You attorned alone to them of your fealty, and your other services, and so you have encumbered yourself. Do you think that you can now disencumber yourself of what you have attorned of your own will? If you had not attorned they could never have avowed upon you alone without T. of Stratton who is your joint feoffee.

Frisq. La fealté le un si est la fealté l'autre del heure q'il tiegnent jointement.

Ber. Vous dites talent.

Malm. Si homme e sa femme soient joint tenants la fealté l'un si est la fealté l'autre.

Ber. Ceo nest pas semblable; mes vous avez conu qe le feffement se fist a vous e T'e a vos heirs. Coment donke averiez vous aide de celui qe est de plus bas estat de vous? *quasi diceret*, nunquam. Pur ceo responez autre chose.

Malm. Pur suite ne pount il avowerie fere, qar nous dioms qe un Nel Payn fut seisi de ces tenemenz devant le statut, e feffa le dit W. Ismoingg' a tenir de lui meisme par les services avantdiz, estre la suite par ceste chartre, qe ne voleit nule suite. (E mist a la court etc.) E le dit W. nous feffa, le quel Neel granta ceux services a Valentin le grant, le quel W. se attorna des diz services a Valentin sanz suite; le quel Valentin granta ses services a Adam Bavent pere cestui T., par quel grant W. se attorna. E demandoms jugement del heure qe lour feffours ne furent unqes seisi de suite, si vous puissez etc.

Herle. Quei responez vous a nostre seisine qe est en la possession? E vostre response si est en le droit a quei vous estes tut estrange; e si vous volez estre eidé, alez a la chauncellerie e purchacez vostre bref en le cas.

Ber. Il n'avera jammes bref qe lui eidera, s'il ne soit eidé par cestui bref, par quei responez autre chose.

Herle. Neel e ses auncestres tiendront ceux tenemenz de nos auncestres chargez de tele suite, e prest del averer.

Malm. A ceo ne avendrez mie, car autrefoiz avez avowé sur W. Ismoingg'. Jugement si ore poez dire qe altre estrange tint de vous etc.

Et postea datus est dies partibus a die Pasche in tres septimanas, saluis utriusque partis rationibus dicendis.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 23d, Sussex.

Roger de Bauent was summoned to answer Walter Randolf on a plea why he together with Thomas le Hunt took a certain ox of Walter's and unjustly detained it against gage etc. And whereupon Walter by his attorney complains that Roger together etc. on [29 June 1310] the Monday next after the feast of the Nativity of St. John the Baptist 3 Ed. II. in the vill of Wysteneston¹ in a certain place called Wyxyeslond took the horse

¹ This place is now called Wiston and is near Steyning.

Friskenev. The fealty of the one is the fealty of the other, since they hold jointly.

BEREFORD, C.J. You are wrong.

Malberthorpe. If a man and his wife are joint tenants, the fealty of the one is the fealty of the other.

BEREFORD, C.J. That is not a like case. You have acknowledged that the feoffment was made to you and T. and your [own] heirs. How could you have aid of him who is of a lower estate than you? Never could you have it, so answer something else.

Malberthorpe. They cannot avow for suit, for we say that one Neal Payn was seised of these tenements before the statute, and enfeoffed the said William [le Ismonger] to hold of him by the services aforesaid, except the suit, by this charter which says nothing of suit. (*Malberthorpe* produced the charter to the court.) William enfeoffed us. This Neal granted the services to Valentine le Grant and William attorned himself of the said services to Valentine without doing suit, and Valentine granted these services to Adam Bavent father of this [Roger] upon which grant William attorned. And since their feoffors were never seised of the suit, we ask judgment if you can etc.

Herle. What do you answer to our seisin, which is in the possession? Your answer is in the right, to which you are altogether a stranger. If you wish to be aided, go to the Chancery and purchase your writ in the case provided.

BEREFORD, C.J. He will never have a writ which will aid him, if he be not aided by this writ; so answer something else.

Herle. Neal and his ancestors held these tenements of our ancestors charged with that suit, and ready are we to aver it.

Malberthorpe. To that you will not come, for you have already avowed upon William le Ismonger. We ask judgment if you can now say, that another stranger held of you etc.

And afterwards a day was given to the parties three weeks after Easter, saving to the parties their arguments on either side.

Note from the Record (*continued*).

and unjustly detained it against gage etc. until etc. Whereupon he says that he is injured and has damage to the value of forty shillings; and thereof he brings suit etc.

And Roger by his attorney comes, and defends tort and force when etc. and well he avows the taking and justly etc., for he says that one William le Ismonger held of Roger one messuage and two virgates of land in the town of Wysteneston by homage fealty and the service of four shillings a year and

Note from the Record (*continued*).

by scutage to wit, for the king's scutage of forty shillings, four shillings, and for more more etc. and by the service of doing suit to the court of Roger at Wysteneston from three weeks to three weeks etc., of which services Roger was seised by the hands of William etc., and this William enfeoffed Walter of the tenements to hold of the chief lords etc. by the services due therefor etc. according to the form of statute¹; and by virtue of this feoffment Walter

49. PRUDE *v.* BEKE.²

Bref foundu sur statut de ouibus.

En un bref foundu sur statut de Malberge³ e des bestes etc. ou le defendaunt dit qe le pleyntif porta soun *replegiari* de mesme la prise e de mesme lez bestes etc. Jugement si a ceti bref etc. Et non potuit dedicere. Ideo nichil capiat etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 194, Bucks.

William le Bek', John atte Oke and John of Dunsford were attached by a writ on the statute to answer John le Prude on a plea why they took fifteen sheep belonging to John le Prude and impounded them and still detain them impounded against the law and custom of the realm etc. and against the peace etc. And whereupon John le Prude by his attorney complains that William and the others on [22 January 13⁰⁰/₁₀] the Monday next before the feast of the Conversion of St. Paul 3 Ed. II. in the town of Lathbury⁴ in a certain place which is called Stodfold took John's sheep aforesaid and impounded them, and still detain them impounded against the law etc. and against the peace etc. Whereupon he says that he is injured and has damage to the value of forty shillings, and thereof he brings suit etc.

¹ Statute of Westminster III., 18 Edw. I. (Quia Emptores).

² From *P* and *M*.

³ ouall, *P*; owall, *M*.

⁴ Lathbury adjoins Newport Pagnell.

Note from the Record (*continued*).

attorned to Roger of his fealty and of the rent of four shillings for the tenements. And because the suit to the court of Wysteneston held on [5 October' 1304] the Monday next after the feast of St. Michael 32 Ed. I. and to all other courts held there till now [was in arrear] he took the ox for that suit.¹

49. PRUDE *v.* BEKE.

A writ founded on the statute concerning sheep etc.

On a writ founded on the statute of Marlborough² concerning beasts etc., the defendant said that the plaintiff had brought his writ of replevin of the same taking and of the same beasts etc. and asked judgment if to this writ [he was bound to answer]. The plaintiff could not deny this. Therefore let him take nothing by his writ etc.

Note from the Record (*continued*).

And William and the others by William of Bragenham their attorney come and defend tort and force when etc. and they say that they ought not to answer him thereof on this writ, because they say that the same John le Prude on the octave of Hilary last past complained here by a common writ of *replegiari*³ of the taking of the aforesaid fifteen sheep on the day and year etc. and upon the taking of them as well they as John le Prude put themselves on a jury of the country, and they have a day here thereof on the octave of the Holy Trinity next to come. Whereupon they ask judgment of the writ etc.

And John le Proude cannot deny that this is one and the same taking. Therefore let William and the others go thereof without day and let John take nothing by his writ, but be in mercy for his false claim etc.

¹ The word 'cras' is here written in the margin of the roll. A blank space of about thirteen inches in depth has been left for the enrolment of the plain-

tiff's replication.

² 52 Hen. III. c. 21.

³ These proceedings are recorded on r, 30 d. of this term.

50. PECHAM v. POYNZ.

I.¹

Replegiari pur eyde a fylle marier.

Un A. porta son *replegiari*.

Denum avowa la prise etc. par la reson q'il tynt de nous² un mies etc. par homage feauté³ et la quarte partie de un fee de chivaler nomement x souz al eskeu etc.⁴ des quex services nous fumes⁵ seisi par my la mayn mesme cesti A. etc.⁶ par qey nous portames bref a viconte de lever renable eide a nostre file marier issi⁷ le viconte destrent et nous livra la destresse, ensi avowoms la prise etc.

Pass. Nous tenoms de vous un mies par homage feaute et⁸ la utime partie deun fee de chivaler et unques des autrez services seisi et de⁹ ceo rien arrere, prest etc.

Denum. A cel averement ne devet avenir, qar ceo serreit deux averementz et¹⁰ deux issues¹¹ de¹² un play.

Pass. Nous vous dioms qe nous ne tenoms de vous si noun par la utime partie de un fee de chivaler et si nous pussoms¹³ a cele rien arrere, qe nous avoms païé v souz.

Ber. S'il ust avowé pur xx souz et vous deisset qe vous ne tenez forqe par v souz, et trové fut qe¹⁴ par xx souz, ne recovereit il les arrerages? *quasi diceret*, sic.

Herci. Vous n'averez mie l'un et l'autre, qar ceo serreit deux issues en un play, mes nous voloms qe¹⁵ vostre reponse seit¹⁶ entré en roule.

Denum. Qe nous avoms esté seisi pur la quarte partie de un fee de chivaler, prest etc.

Et alii econtra.

II.¹⁷

Un A. porta sun *replegiari* vers B. B. avowa etc. par la resoun q'il tient de lui demi fee de chivaler par homage e escuage; e pur ceo q'il purchaca bref le roi de avoir aide de ses tenanz pur Isabel sa fille

¹ From *R* collated with *C, P, Q.* ² *ly, P.* ³ *Om. par homage feauté, C. For feauté subs. etc., P, Q.* ⁴ *Om. nomement . . . etc., C, P, Q.* ⁵ *For nous fumes subs. il fut, C, P, Q.* ⁶ *Om. etc., C, P, Q.* ⁷ *Ins. qe, C, P, Q.* ⁸ *Om. un mies . . . et, C, P, Q.* ⁹ *Ins. etc. par, P, Q.* ¹⁰ *Om. deux averementz et, Q.* ¹¹ *Om. et deux issues, C, P.* ¹² *Subs. en, C, P, Q.* ¹³ *Om. si nous pussoms, C, P, Q.* ¹⁴ *Ins. quant, C.* ¹⁵ *Om. qe, P, Q.* ¹⁶ *Om. nous voloms qe, C, P, Q.* ¹⁷ *serra, C, P; om. seit, Q.* ¹⁷ From *Y* (fo. 173 v°).

50. PECHAM *v.* POYNZ.

I.

Replevin for an aid for the marriage of the king's daughter.

One A. brought his replevin.

Denham avowed the taking etc. for the reason that the tenant held of [the avowant] a messuage etc. by homage fealty etc. and the fourth part of a knight's fee, namely, ten shillings for the shield etc., of which services [he was] seised by the hand of this A.; whereupon [the avowant] brought a writ to the sheriff to levy a rightful aid for the marriage of [the king's] daughter, so that the sheriff distrained and delivered the distress to us. So [he] avowed the taking etc.

Passeley. We hold of you one messuage by homage fealty and the eighth part of a knight's fee, and never were you seised of any other services. And of that nothing is arrear. Ready etc.

Denham. To that averment you ought not to come, for so there would be two averments and two issues in one plea.

Passeley. We tell you that we hold of you by the eighth part only of a knight's fee, and so we can [say] as to that nothing is arrear, for we have paid five shillings.

BEREFORD, C.J. If he had avowed for twenty shillings, and if you said that you held by five shillings only, and it were found that you held by twenty shillings, would he not recover his arrear? I think that he would.

STANTON, J. You will not have both averments, for that would give two issues in one plea, but your answer will be entered on the roll.

Denham. That we have been seised [of the service] of the fourth part of a knight's fee, ready etc.

And the others to the contrary.

II.

One A. brought his replevin against B. who avowed for the reason that A. held of him half a knight's fee by homage and scutage, and because he had purchased the king's writ for having aid from his

marier le quel bref il porta a viconte, par vertue de quel bref le viconte manda sun baillif a distreindre celui A. pur x souz qe lui afferroit de demi fee de chivaler q'il tient de B. les queles destresces il nous livra e issi avowoms etc.

Pass. La ou il dient qe nous tenoms de eux demi fee de chivaler nous ne tenoms de eux qe la quarte partie de un fee etc. a quei afferreit v souz de eide etc. des queux v souz il sunt seisiz. E demandoms jugement etc. Et dioms outre la ou il avowe pur escuage nous dioms qe ceo est en le fee l'ercevesque de Canterbiri la ou nul escuage est rendu.

Willuby. Vous tenez de nous demi fee etc. a quei tant afferroit etc. e prest del averer.

Pass. Nous voloms averer qe nous ne tenoms qe la quarte partie etc. e qe vous estes seisi de v souz qe afferroit etc.

Hervi a Pass. Volez vous aver deus averemenz, un a trier la tenance e un altre q'il est pleinement païé de v. souz ?

Pass. Sire, autrement si trové soit qe nous tenoms de lui demi fee etc. les v souz qe nous avoms païé si serront a nous perduz.

Hervi. Jeo crei bien que si trové soit qe vous tenez de luy demy fee etc. nous luy agardoms retorn des avers.

Hervi a Willuby. Suiez bref de fere venir bone enqueste etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 51, Kent.

Nicholas Poynz and Geoffrey Albard were summoned to answer John of Pecham on a plea wherefore they took a certain steer belonging to John and unlawfully detained it against gage etc. And whereupon John by his attorney complains that Nicholas and Geoffrey on [14 June 1309] Saturday [after]¹ the feast of St. Barnabas the Apostle 2 Ed. II. in the vill of Wroteham in a place which is called Aldeham took that steer and unlawfully detained it against gage etc. until etc. Whereupon he says that he is injured and has damage to the value of forty shillings; and thereof he brings suit etc.

And Nicholas and Geoffrey come by their attorney and defend tort and force when etc. And they avow the taking as good and lawful etc. for they say that John holds of Nicholas one messuage and two carucates of land in the vill aforesaid by homage and fealty and the service of half a knight's fee and scutage etc. to wit, for the king's scutage of forty shillings, twenty shillings, when it shall occur, and for more more and for less less etc., and of doing suit to Nicholas's court of Lullyngston Castel² from three weeks to three weeks, of which services one Hugh the father of Nicholas was seised by the hand of one Martin father of John whose heir etc. And also the same Nicholas is seised of the homage aforesaid by John's hand etc.

¹ The record gives the date as 'Saturday the feast . . .' which is wrong, as the 11th June fell on a Thursday in this year.

² Near Farningham.

tenants for the marriage of Isabel the king's daughter, which writ he brought to the sheriff, and by virtue thereof the sheriff sent his bailiff to distrain this A. for ten shillings which it behoved him to pay for half a knight's fee which A. held of B. These distresses the bailiff delivered to us, and so we avow etc.

Passeley. Whereas they say that we hold of them half a knight's fee, we say that we hold of them the fourth part only of a knight's fee etc. to which five shillings of aid should belong etc., and of those five shillings they are seised. We ask judgment etc. We say further that whereas he avows for scutage, this fourth part is in the fee of the Archbishop of Canterbury, where no scutage is rendered.

Willoughby. You hold of us half a knight's fee to which so much belongs, and this we are ready to aver.

Passeley. We will aver that we hold the fourth part only, and that you are seised of the five shillings which belongs thereto etc.

STANTON, J., to *Passeley.* Do you want two averments, one to try the tenancy and the other that he has been fully paid with five shillings?

Passeley. Yes, sir, otherwise if it were found that we hold half a fee of him etc., the five shillings which we have paid would be lost to us.

STANTON, J. I think that if it were found that you hold of him half a fee etc. we should award him return of the beasts.

STANTON, J., to *Willoughby.* Sue a writ to make a jury come etc.

Note from the Record (*continued*).

And he says that Nicholas had the king's writ of having aid for marrying his first-born daughter from his fees, which aid was assessed upon John at ten shillings by reason of the scutage aforesaid, and for this (*per quod*) Nicholas and likewise Geoffrey as the king's bailiff made the distress in the tenements for the aid aforesaid, as well they might etc.

And John says that Nicholas and Geoffrey unlawfully avow the distress for the aid of ten shillings etc.; for he says that he holds the tenements of Nicholas by homage fealty and by the service of a fourth part of a knight's fee only. And he says that he paid to Nicholas the aid which fell him by reason of the fourth part, to wit five shillings for marrying his daughter aforesaid, before the day of the taking etc. Whereupon he well says that neither Nicholas nor his ancestor was ever seised except of the service of the fourth part of a knight's fee by reason of the tenements aforesaid and they were not seised of a moiety etc. as Nicholas avows etc. And he asks that this may be enquired by the country.

Issue is joined and a *venire facias* awarded here for the octave of Trinity,

51. FRAUNCEYS v. LATIMER.¹

Ou tenant a terme de vie ne puet eide avoir etc.

Geffrey le Sauvage se pleint de Alice Latimer de ceo qe le dit Alice atort prist ces avers.

Alice avowe la prise bone etc. par la reson qe Johan le Sauvage en tient de lui un mees e une carué de terre par homage e fealté e par les etc. de ij souz etc. e pur les services arrere, si avowe il en le lieu ou la prise fu fete com en parcel etc.

J. Granteb. G. vous dit q'il tient ceux tenemenz a terme de sa vie du lees Johan le Sauvage e prie eide de Johan. E veez cy Johan par atturné, e se joint. Et non potuit admitti.

Herle. Eide ne devez avoir, qar vous n'estes qe tenant a terme de vie. Jugement etc.

Grantebrigge. Autrefois l'eide nous fust granté e noma le terme. Jugement si ore ne devoms avoir.

Ber. Tenanz a terme de vie ou des anz pur feblesse de lour estat ne pount eide avoir.

Ber. Ou est le roulle ou eide vous fust granté.

E pus moustré lui fust le roulle; e dist a *Ridenhale* q'il escreit sur le roulle *error*, et sic fuit.

Grantebrigge. Hors de son fee, prest del averer.

Et alii contrarium.

Et pus *Grantebrigge* dit qe G. serroit nounsuy, e pus a la seconde plevissement par forme de statut Johan vendreit en propre persone e respondreit a l'avowerie etc.

Nota qe altrefois soleit aide estre granté as tenanz a terme de vie e des anz, auxi avant com *Ber.* grante eide au tenans en dower ou par la lei d'Engleterre. Hoc dictum fuit michi per J. Grantebrigge.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 212d, Bedford.

Alice la Latimere was summoned to answer Geoffrey Fraunceys on a plea why she together with Geoffrey Orgar and Geoffrey le Warner took beasts belonging to Geoffrey and unlawfully detained them against gage and pledges etc. And whereupon Geoffrey by his attorney complains that Alice together etc. on [18 March 1308] the Monday before the feast of the Annunciation of the Blessed Mary 1 Edw. II. at Wrastlingworth² in a certain place which is called Waterfore took two horses belonging to Geoffrey and unlawfully detained them against gage and pledges etc. until etc. Where-

¹ From Y (fo. 173 v^o). ² Now called Wrestlingworth.

51. FRAUNCEYS *v.* LATIMER.

A case in which a tenant for life could not have aid etc.

Geoffrey [Fraunceys] complains of Alice la Latimer that she wrongly took his beasts.

Alice avowed the taking as good, for the reason that John [Fraunceys] held of her one messuage and a carucate of land by homage and fealty and by the services etc. of two shillings etc. and for the services arrear she avows in the place where the taking was made as in parcel etc.

John Cambridge. Geoffrey tells you that he holds these tenements for the term of his life of the lease of John [Fraunceys], and he prays aid of John. See him here by his attorney.

And John joined [in answering], but he could not be received.

Herle. Aid you ought not to have; for you are tenant for life only. Judgment etc.

Cambridge. Heretofore aid was granted us (—and he named the term). We ask judgment if we ought not to have it now.

BEREFORD, C.J. Tenants for life or for years by reason of the feebleness of their estates cannot have aid.

BEREFORD, C.J. Where is the roll on which aid was granted to you?

Then he was shown the roll, and he told *Ridenhale* that he should write upon it Error. And this he did.

Cambridge. Outside his fee. Ready are we to aver it.

And the others to the contrary.

Cambridge said afterwards that Geoffrey ought to be non-suited, and then on a second plevy by form of the statute,¹ John should come in his own person and answer the avowry etc.

Note that heretofore aid was wont to be granted to tenants for life and for years, just as formerly *Bereford* granted aid to tenants in dower or by the law of England. This was told me by John Cambridge.

Note from the Record (*continued*).

upon he says that he is injured and has damage to the value of one hundred shillings etc. And thereof he brings suit etc.

And Alice by her attorney comes and defends tort and force when etc. and she avows the taking as good and lawful etc. because she says that one John the son of Richard Fraunceys holds of her one messuage and forty acres of land in the town of Wrastlingworth by homage fealty and the service of two shillings and eleven pence a year and of doing suit to Alice's

¹ Statute of Westminster II., 13 Edw. II. c. 2.

Note from the Record (*continued*).

court of Sutton from three weeks to three weeks and by the service of the twentieth part of the fee of one knight, to wit, for the king's scutage of forty shillings when it shall occur, two shillings, and for more more and for less less, of which services one William le Latimer sometime Alice's husband and the same Alice were seised by the hands of Richard Fraunceys the father of John whose heir he is, as of the right of Alice, and because the homage and fealty of John after the death of Richard the father etc. were

52. CRESSY *v.* GRATTON.I.¹

Replegiari ou le tenaunt se voleit avoir deschargé de une sewte par une chartre et par une fin, et la partie le voleit avoir chacé d'avoir tenu a l'un etc.

Thomas de Cressy et Mahaude sa femme porterent lour *replegiari* vers W. de Spreton et Isabel sa femme.

Herle. Nous avowoms la prise etc.² et conissons pur W. Cressi et Isabel sa femme come lour baillif³ par la resoun qe mesme cestui T. et M. sa femme come du droit M. tenent de nous come du dreit I. et J.⁴ un mees et C. bovez de terre par homage feauté et escuage,⁵ cest assavoir etc.⁶ et siwite a sa court etc. des queux services nous sumes⁷ seisi par my la mayn T. et M. come par my etc. Et pur homage etc.⁸ arrere de tant de temps avaunt le jour de la prise etc. si avowe⁹ etc.

Malm. Nous tenoms¹⁰ la tierce partie du manoir etc. de C. forspris la quarte¹¹ partie de xl acres de terre et xxx acres du boys par homage et feuté et la tierce partie de un fee¹² de chivalier et un¹³ blauncgaunt par an pur toux services saunz siwite faire par les fetz vos auncestres qe cy sount. Jugement si encountre le fait vos auncestres¹⁴ pur siwite puissetz destresce avower.

Herle. A ceo ne purray jeo estre partie saunz J. nostre parceinere. Et prioms aide de luy. Et habuit.

Et puis vindrent et avowerent joyntement *in forma predicta*.

Malm. Vostre besael douna a T. nostre auncestre la tierce partie

¹ From *B* collated with *C, G, P, Q, R.* ² *Ins.* pur Willem et Isabel, *R.*
³ *Om.* pur W. . . . baillif, *C, P, Q.* *Ins.* pur Johanne nostre parcenere, *P.* ⁴ *Ins.* sa parcenere, *C, P, Q.* ⁵ *Om.* et escuage, *C, P, Q.* ⁶ *Om.* cest assavoir etc., *C, P, Q.*
Ins. et par lez services de la terce partie de un fee de chivaler, *C, P, Q.* *Ins.* la terce partie de un fee de chivaler, *R.* ⁷ *For* nous sumes, *subs.* eux fuerent, *C, P, Q.*
⁸ *Ins.* et sute, *G, R;* *for* homage etc. *subs.* la seute, *C, P, Q.* ⁹ *Om.* de tant . . . avowe, *C, P, Q.* ¹⁰ clamoms tenir de vous, *C, P, Q.* ¹¹ terce, *C, P, Q.* ¹² *So in G;* vij feez, *B.* ¹³ *Ins.* peire de, *C, P, Q.* ¹⁴ *Om.* encountre . . . auncestres, *C, P, Q.*

Note from the Record (*continued*).

arrear to Alice on the day of the taking she took the horses in the place of Waterfore which is parcel of the tenements in her fee as well she might etc.

And Geoffrey says that Alice cannot avow the taking as lawful in the place aforesaid, because he says that Alice did not take the beasts in her fee but outside her fee; and of this he puts himself upon the country.

Issue is joined, and a *uenire facias* awarded here for the quindene of Trinity.

52. CRESSY *v.* GRATTON.

I.

A case of replevin in which the tenant wished to discharge himself of suit of court by a charter and a fine and the avowant wished to drive him to hold to one or the other of them.

Thomas de Cressy and [Margery] his wife² brought their writ of replevin against William of [Gratton] and Isabel his wife.

Herle. We avow the taking [for William and Isabel his wife] etc. and we acknowledge for William de Cressy and [Joan] his wife as their bailiffs, for the reason that this same Thomas and Margery his wife as of the right of Margery hold of us as of the right of Isabel and Joan one messuage and [sixteen] bovates of land by homage fealty and escuage, to wit, [the third part of a knight's fee] and suit to his court etc. of which services we are seised by the hands of Thomas and Margery as by etc. And for homage etc. and suit arrear for so much time before the day of the taking etc., we avow etc.

Malberthorpe. We hold the third part of the manor etc. of [Wandisley] (except the fourth part of forty acres of land and thirty acres of wood,) by homage and fealty and the third part of a knight's fee and a white glove [to be rendered] annually for all services without doing suit, by the deeds of your ancestors, which are here. We ask judgment if you can avow the distress for suit against the deed of your ancestors.

Herle. I cannot be a party to that without Joan our parcener, and we pray aid of her. (He had aid; and then they came and avowed jointly in the form aforesaid.)

Malberthorpe. Your great-grandfather gave to [Ranulph] our

¹ This appears in the Old Edition on p. 99.

² The record show that Margery was not a party to the writ.

du manoir de ¹ C. forspris etc.² a tenir par homage et par ³ la tierce partie d'un fee et un ⁴ blaunc gaunt ⁵ par an pur tous services. Et puis une fine se leva entre F. nostre auncestre et L. vostre ael ⁶ q'il luy dona la iiij partie de xl acres de terre etc. a tenir par mesme les services saunz siwite faire. Jugement si encountre le fet ⁷ vos auncestres qi heir.⁸ Et voleit la fyn q'il tyndreit les tenemenz qe passerent par my la fyne par mesme les services qe furent compris deinz la chartre.

Herle. Vous mettet avaunt deux fetz pur nous ouster de nostre avowere; ⁹ a quel d'eux voilletz vous tener?

Toud. Nous voloms estre aidé par l'un et l'autre, qe la fyne veot qe nous tenoms ¹⁰ les tenemenz qe passerent etc. deschargietz de siwite etc., et la chartre le veot; et issint afferme l'un l'autre.¹¹

Herle. Il ount conu le homage, et qaunt a ceo demaundoms jugement.

Malm. Nous avoms touxjours esté prest de faire homage et unqore sumes.

Will. Et nous prest a reseceivre, et prioms qe vous le facetz.

Stanton. Nous agarderoms james q'il vous face ¹² homage si la qe vous seietz a un des services et de la tenaunce.¹³

Herle. Nous avoms avouwé par la resoun q'il tient de nous un mees et xvj bovees de terre par homage etc. et a eux deschargier si mettent il avaunt deux fetz,¹⁴ dient il as queux des ij il se voillent tenir.

Malm. Vostre besael dona a nostre auncestre la iij partie du manoir etc. et par ceste chartre a tenir par homage etc. Et puis entre vostre ael et nostre auncestre ¹⁵ se leva une fyne, cest assavoir q'il luy donna la iiij partie de xl acres de terre et de xxx acres de bois a tener ceux tenemenz ensemblement ove les tenemenz qe passerent par my la chartre par les services contenuz en la chartre pur toux services. Jugement si pur siwite encountre etc.¹⁶ Et issint tenoms les tenemenz par l'un fet et l'autre; et a l'un fait et l'autre covient qe nous nous tenoms.¹⁷

Herle. A les ij fetz ne se puissent il tenir, qe ensi un plee prendra ij issues,¹⁸ qe mesqe nous dedeissoms un unqore il nous

¹ For du manoir de C. *subs.* de un fee de chivaler, R. ² Om. forspris etc. C, P, Q. ³ For homage et par, *subs.* lez services de, C, P, Q. ⁴ Ins. peire de, C, P, Q. ⁵ For forpris etc. . . . gaunt *subs.* pur une blaunche peire des gauntz, R. ⁶ besael, C, P, Q. ⁷ Ins. par, C, P, Q. ⁸ fetz, G, P, Q, R. ⁹ Ins. poez avower, C, *Sim.* P, Q. ¹⁰ Ins. etc. R. ¹¹ Om. pur . . . avowere, C, P, Q. ¹² tendroms, C, P, Q, R. ¹³ For afferme l'un l'autre, *subs.* le un pursuant a l'autre, C, P, Q. ¹⁴ For q'il vous face, *subs.* a fere, C, P, Q. ¹⁵ Om. et de la tenaunce, C, P, Q. ¹⁶ feez, B. ¹⁷ For vostre . . . auncestre, *subs.* eux, C, P, Q. ¹⁸ Om. Jugement . . . etc., C, P, Q. ¹⁹ Om. et a l'un . . . tenoms, C, P, Q. ²⁰ For un plee prendra ij issues *subs.* enseweroit deux issues en un play, C, P, Q, R.

ancestor the third part of the manor of [Wandisley] except etc. to hold by homage and the third part of a [knight's] fee and a white glove [to be rendered] annually for all services. Afterwards a fine was levied between [Ranulph] our ancestor and [Alexander] your grandfather, by which Alexander gave to Ranulph the fourth part of forty acres of land¹ etc. to hold by the same services without doing suit. We ask judgment if [you can avow] against the deeds of your ancestors whose heirs you are. The fine stated that Ranulph should hold the tenements which passed thereby by the same services as were comprised in the charter.

Herle. You put forward two deeds to oust us from our avowry. To which of them will you hold?

Toudeby. We wish to be aided by both, for the fine says that we hold the tenements which passed by it, discharged of the suit etc., and the charter says the same; so the one affirms the other.

Herle. They have acknowledged the homage. As to that we ask judgment.

Malberthorpe. We have always been ready to do homage and still are ready.

Willoughby. We are ready to receive it and pray that you do it.

STANTON, J. We will never award that he do homage to you, until you are at one about the services and the tenancy.

Herle. We have avowed for the reason that [they hold] of us one messuage and sixteen bovates of land by homage etc., and to discharge themselves they put forward two deeds. Let them say to which of the two they will hold.

Malberthorpe. Your great-grandfather gave to our ancestor the third part of the manor etc. by this charter to hold by homage etc. Then between your grandfather and our ancestor a fine was levied, that is to say, that your grandfather gave him the fourth part of forty acres of land and of thirty acres of wood¹ to hold the same together with the tenements which passed by the charter by the services contained in the charter for all services; and so we hold the tenements by both deeds, and to both deeds we must hold. [We ask] judgment if [you can avow] for suit against etc.²

Herle. They cannot hold to deeds, for so one plea would take two issues, for even though we denied one, still it would be

¹ These particulars are not stated in the record. See p. 123 below.

² This last sentence seems to be misplaced in the French text.

covendra¹ tenir² a l'autre. Et d'autrepart l'un fet chiet en record et l'autre en fet.³ Jugement si a touz deux etc.⁴

Berr. Vous estes a diverses etc. qaunt a la tenaunce et qaunt a les services etc.⁵ Seiet a un adeprimes de la tenaunce, et puis pledietz a les services.

Herle. Nous avoms avowé par la resoun q'il tyent de nous un mees et xvj boveez de terre dount le lieu etc. Conussent⁶ la tenaunce ou dedient etc.

Malm. Nous conissons⁷ pas⁸ par bovetz einz par⁹ partie du manoir, et vous dyoms qe ceo qe nous avoms en mesme la ville etc. ceo avoms tenu de tout temps come tierce partie du manoir¹⁰; et nostre feffour le tient en mesme la manere come parcel du manoir.¹¹

Herle. Vous conissietz bien qe vous tenetz de nous le lieu ou la prise fuist fait, conissietz qe vous tenetz les xvj bovetz auxint come nous avoms avowé ou desclamet en la tenaunce.

Denom. Nous tenoms de vous¹² xvj. bovetz et plus, mes nient par bovetz einz par terce partie du manoir.

Stanton. Dounge covent il qe vous seietz a un, qe vous dites qe ceo q'il appelle boves etc.¹³ c'est tierce partie du manoir.

Malm. Qaunt¹⁴ q'il¹⁵ chace, c'est qe nous duissoms¹⁶ conustre qe nous tenoms par bovetz¹⁷ a ouster nous de la seignourie solome l'apurtenaunce¹⁸ de nostre tenaunce¹⁹ et nous ne lez pomes vier, le quel q'il voillent avouwer pur ceo qe nous tenoms par nombre des acres ou par bovetz ou en autre manere.²⁰

Scrop. Vous ne pledetz mie cy²¹ un noun tenure ne a perdre terre ne a gaigner, einz a trier les services, par quei etc.

Herle. Nous demorroms en vos agardetz s'il puissent ceux deux fetz usier.

Malm. Jeo vous moustre q'il puissent usier l'un et lautre; qe²² si vous me eussetz feffé de xx acres de terre par xx chartres a tenir saunz sute, et puis me destreinisses²³ et avowasses²⁴ pur sute, ne moy deschargerai jeo mye de cel siwite par toutz les fetz, *quasi diceret*, sic,

¹ *Om.* covendra, *R.* ² respoudre, *C, P, Q, G,* responderoms, *R.* ³ averement, *C, P, Q.* ⁴ *Om.* Jugement . . . etc., *C, P, Q.* ⁵ *Ins.* pur ceo, *C, P, Q,* par qey, *R.* ⁶ *Ins.* eux, *C, P.* ⁷ ne tenoms, *C, P, Q,* ne conuseroms, *R.* ⁸ *Ins.* qe nous tenoms, *R.* ⁹ *Ins.* terce, *C, G, P, Q, R.* ¹⁰ *Om.* et vous . . . du manoir, *P, Q;* *Add* et nent par bovez, *C, P, Q.* ¹¹ *Om.* come . . . manoir, *C, P, Q.* ¹² ly, *C, P, Q, R.* ¹³ *Om.* vous dites . . . etc. *C, P, Q.* ¹⁴ counta, *P.* ¹⁵ *Ins.* nous, *C, P, Q.* ¹⁶ *For* qe nous duissoms, *subs.* a, *C, P, Q.* ¹⁷ *Ins.* et, *C, P, Q.* *Ins.* est, *R.* ¹⁸ la porcioun, *G.* ¹⁹ *Ins.* com il unt, *G.* *For* solome . . . tenaunce, *subs.* ove nous avoms taunt avaunt seignurie solum nostre porcioun comme il ount, *R;* ou nous avoms a nostre porcion com il unt, *C, P, Q.* ²⁰ *Om.* et nous ne . . . manere, *C, P, R, Q.* ²¹ *Ins.* a, *C, P, Q, R.* ²² *Om.* Jeo . . . qe, *C, P, Q, R.* ²³ destr', *C, B, P, Q, R.* ²⁴ avowet, *R.*

necessary for us to [answer] the other. Besides one lies in record, the other in [averment by the country]. We ask judgment if we must answer both.

BEREFORD, C.J. You are in difference as regards both the tenancy and the services etc. Be at one first about the tenancy, and then plead about the services.

Herle. We have avowed for the reason that they hold of us a messuage and sixteen bovates of land, whereof the place [in which] etc. [is parcel]. Let them acknowledge or deny the tenancy etc.

Malberthorpe. We do not acknowledge the tenancy by bovates but by [a third] part of the manor; and we tell you that what we have in the same vill etc. that we have always held as the third part of the manor; and our feoffor held it in the same way as parcel of the manor.

Herle. You acknowledge that you hold of us the place where the taking was made. Acknowledge, then, that you hold the sixteen bovates as we have avowed or disclaim the tenancy.

Denham. We hold of you sixteen bovates and more; not as bovates, but as the third part of the manor.

STANTON, J. Then you must be at one, for you say that what he calls bovates etc. is the third part of the manor.

Malberthorpe. Howsoever he presses us, it is to make us acknowledge that we hold by bovates, in order to oust us from the seignoury in proportion to our [share] of the tenancy; and we cannot allow them to do that, whether they choose to avow because we hold by a number of acres or by bovates or in any other way.¹

SCROPE, J. You are not pleading non-tenure here, nor about losing or gaining land, but to try the services; therefore etc.

Herle. We will abide by your award whether they can use these two deeds.

Malberthorpe. I will show you that they can use both. If you had enfeoffed me of twenty acres of land by twenty charters to hold the same without doing suit, and you then distrained me and avowed for the suit, should I not discharge myself of that suit by all the

¹ This seems to be the purport of the speech, but the meaning of 'vier' in this context is not clear.

auxint de ceste part. Et d'autrepart si vous moy enfeffetz¹ par diverses chartres e puis vous demaundetz l'entier dever moy, jeo ne puis pas par une chartre vous rebouter d'accioun,² mes covent qe jeo les ai³ toux, auxint de ceste part.

Berr. La chartre q'il met avaunt veot q'il teigne la tierce partie de toux les terres qe vostre auncestre⁴ avoit en mesme la ville pur un⁵ blaunc gaunt pur toux services sauve les foreins services. Et puis graunta vostre ael par la fyne q'il tendreit autres tenemenz ensemblement ove les tenemenz qe passerent par my la chartre par une mesme service.⁶ Et espesifie les services par my la fyn pur⁷ homage et la tierce partie d'un fee de chevalier et une blaunc gaunt pur toux services⁸ Et issint luy veot il deschargier par l'un et l'autre; et issint sount il annex q'il ne puissent pas estre severetz.

Herle. La demorroms en vos agardez, desicome vous mettez avaunt deux faitz et l'un chiet en record et l'autre en fait, et issint⁹ diverses issues et sount de diverses auncestres et diverses temps, s'il puissent l'un et l'autre user etc.¹⁰

E puis furent chacetz a respoundre a la tenaunce ou il disoient q'il tindrent par bovez etc. et ne mye par tierce partie etc.

Et alii econtra.

Et fuit casus q'il y avoit waust apporter a la tierce partie du manoir, de quei il le volleit auoir ousté par l'avowere etc.

II.¹¹

Ou l'avowerie fust fete pur suite e plederont longement a la tenance; e pus plederent au service etc.

Thomas de Crescy se plaint qe Willem de Crescy atort prist ces avers etc.

Willem avowe pur lui e pur Isabel sa femme e conust com baillif pur Johan de Craston e Maude sa femme com du dreit Isabel e Maude par la reson qe le dit T. e Alice sa femme tenent de eux un mees e xvj bovez de terre ove les appurtenances en C. par homage fealté e par les services de la terce partie de un fee de chivaler e par un

¹ *Ins.* de divers tenemenz, *C, P, Q, R.* ² *Om.* d'accioun, *C, P, Q, R;* *Ins.* par le garantie, *R.* ³ *For* les ai, *subs.* usse, *P, R,* vous reboute par, *C, Q.* ⁴ ael, *C, P, Q.* ⁵ *Ins.* un peyre de, *C, P, Q, R.* ⁶ *For* sauve les foreins . . . service, *subs.* Et la fyn veut q'il tygne lez autres tenemenz par mesme lez services, *P, Q.* The text in *C* is corrupt from the word 'sauve.' ⁷ par, *R.* ⁸ *Om.* par my . . . services, *C, P, Q.* ⁹ *Subs.* sunt de, *C.* ¹⁰ *Q* and *R* end here; but *C* and *P* have in addition the words 'et sic pendet.' ¹¹ From *Y* (fo. 174 r°).

deeds? I should say so; and so in this case. Moreover, if you enfeof me by different charters and then demand the entirety against me, I could not by one charter rebut you from an action, but I should be obliged to use them all; and so in this case.

BEREFORD, C.J. The charter which he puts forward says that he holds the third part of all the lands which your ancestor had in the same vill by a white glove for all services save the foreign services. Then your grandfather granted by the fine that [his feoffee] should hold other tenements together with the tenements which passed by the charter by one and the same service, and he specified the services in the fine as homage and the third part of a knight's fee and a white glove for all services. Therefore he wishes to discharge himself by both; and they are so annexed to one another that they cannot be severed.

Herle. Since [they] put forward two deeds, and one of them lies in record and the other in [averment], and since they lead to different issues and were granted by different ancestors and are of different dates, we will abide by your award, whether they can use both of them etc.

And then they were driven to answer to the tenancy, and said that they held by bovates etc., and not by the third part of the manor etc. And the others to the contrary.

It was the case that there was waste belonging to¹ the third part of the manor, and from this the avowant wished to have ousted the tenant by his avowry etc.

II.

A case in which the avowry was made for suit, and they pleaded for a long time on the tenancy, and afterwards they pleaded on the service etc.

Thomas de Cressy complains that William [of Grafton] wrongly took his beasts etc.

William avows for himself and Isabel his wife and acknowledges as bailiff for [William de Cressy] and [Joan] his wife as of the right of Isabel and [Joan] for the reason that the said Thomas and [Margery], his wife hold of them one messuage and sixteen bovates of land with the appurtenances in [Selston] by homage fealty and the service of the

¹ It is assumed in the translation that 'apporter' is an error for 'apportenant.'

blaunke gaunte, *scil.* une peire de gaunce e par suite a lour court de Wandisley de iij semeines [etc.] des queux services Randolf pere les dites Isabel e Maude fut seisi par mi la main T. e A. com par mi la main etc. e pur le homage e la suite arere, si avowe etc. e conust etc.

Thomas vous dit qe ceo est le dreit Alice sa femme e prie aide de sa femme.

Herry. Venent totes les femmes—(Et ego quesui si mulieres deberent summoniri. Et responsum fuit quod sic, *scil.* Johan e Maude furent summezez)—e gaitez voz jours as utaves de seint Hillaire. (A queu jour il viendront trestouz e avowent com avant.)

Touth. A tele avowerie ne pount il avenir par la reson qe E. lour besael fut seisi de la terce partie du maner de N. qe hors de sa seisine enfeffa un A. pere A. nostre femme forspris un mies e une pecherie, le quel il appellont bovez, par homage e les altres services estre la suite. (E mistrent chartre a la court qe ceo tesmoigne.) Et pus F. fiz e heir E. ael les dites Isabel e M. en temps le roy H. ael etc. leva une fin au D. nostre auncestre, qi heir etc. e lui granta la terce partie de xl acres de terre et iiii^{xx} acres de bois e conferma le doun C. sun pere pur les avantdiz services estre la suite. Et demandoms jugement si encontre le fet lour auncestre puissent pur suite avower; e quant al homage prest furent a fere le homage e uncore sunt.

Herle. En barrant nous de cest avowerie, il mettent avant chartre e fin. A queux de ces deus velent eux tenir?

Touth. A l'un e l'autre; qar l'un est en affermant l'autre.

Herle. Le deus feffemenz tendent a divers issues. Jugement, si vous poez joier l'un e l'autre.

Scrop. Coment qe les feffemenz soient diverses, tut joint en un service, par quei l'un est poursuivant a l'autre.

Herle. Vostre excepcion si est peremptorie a nostre avowrie, par quei lei ne suffre mie qe vous seez resceu a user deus feffemenz qe tendont a divers issues. Et demandoms jugement.

Touth. Si nous fuissoms a dereigner aquitance par ces feffemenz qe supposont garrantie e aquitance, jeo entenke qe vous ne purriez

third part of a knight's fee and by a white glove, to wit a pair of gloves, and by suit to their court of Wandisley from three weeks to three weeks, and of these services Randolf the father of the said Isabel and [Joan] was seised by the hand of Thomas and [Margery] as by the hand etc. and for the homage and suit arrear he avows etc. and acknowledges etc.

Thomas tells you that this is the right of [Margery] his wife and he prays aid of her.

STANTON, J. Let all the women come. (I asked if women ought to be summoned and was told that they ought; and [William¹ and Joan] were summoned.) Await your day on the octave of St. Hilary.

(At that day all the parties come and avow as before.)

Toudeby. To such an avowry they cannot come for one [Nicholas] their great-grandfather was seised of the third part of the manor of [Wandisley] who of his seisin enfeoffed one A. the [great-grandfather] of [Margery] our wife thereof, save one messuage and a fishery, (which lands [the avowants] call bovates,) by homage and the other services except the suit. (And he produced a charter to the court which witnessed this.) Then [Alexander] the son and heir of [Nicholas] and grandfather of the said Isabel and [Joan] in the time of King Henry III. etc. levied a fine to [Ranulph] our ancestor, whose heir we are, and granted to him the third part of forty acres of land and eighty acres of wood, and confirmed the gift of [Nicholas] his father to hold by the aforesaid services except the suit. We ask judgment if against the deed of their ancestor they can avow for suit, and as to homage the plaintiffs were ready to do it, and are still ready.

Herle. To bar us from this avowry, they put forward charter and fine. To which of them will they hold?

Toudeby. To both, for one of them is in affirmation of the other.

Herle. The two feoffments lead to different issues. We ask judgment if you can use both.

SCROPE, J. Although the feoffments are different, they yet are one as regards the service, therefore one is consistent with the other.

Herle. Your exception to our avowry is peremptory. Therefore the law does not suffer you to be received to use two feoffments which lead to different issues. We ask judgment.

Toudeby. If we were to deraign acquittance by these feoffments, which suppose warranty and acquittance, I think that you could not

¹ The MS. has 'Johan e Maud,' representing William and Joan in the record.

turter¹ de l'aquitance par les deus feffemenz qe supposont un service, *ergo* etc.

Ber. a Touth. Vous lour surmettez un tort, *scil.* une tortenouse destresce qe est gros e un entier en sei, dount a ouster les de ceo par ij feffemenz qe supposont estre de divers tenemenz, e fets en divers temps e entre diverses persones; il semble q'il vous covent tenir a un etc.

Touth. Sire, nous tenoms a la chartre qe lour besael enfeffa nostre besael des tenemenz en Wandisley ensemblement ove une fin qe se leva entre lour ael e nostre ael de la 3^{ce} partie de xl acres de terre e iiij^{xx} acres de bois en C. en confermant mesme le doun a tenir trestut par un mesme service. Et de ceo demorroms en vos avisemenz.

Alio die *Ber.* recapitulavit omnia supradicta et dixit a *Herle* :

Vous avez pur suite e homage avowé; eux sunt prest pur faire le homage. Et quant a la suite il vous bient barrez² par les fetz voz auncestres, *scilicet* par chartre e par fin.

Et ad hoc *Herle* respondebat *ut supra*.

Ber. Vous ne poez estre a un des services tanke vous seez a un de la tenance, car vous dites q'il tiegnent de vous par boveez, e il dient q'il tenent pur la tierce partie de maner ensemblement ove les autres terres e tenemenz contenuz en la fin etc.

Et postea *Ber.* dixit *in consilio*. Jeo crei q'il dient q'il tenent par terce partie de maner pur ceo qe si wast soit ou autre profist q'il puissent joier lour purpartie del profist. Car s'il tenent par bovez il n'averont mie cele avantage.

Scrop a Herle. Si eux voleient granter ove vous q'il tenent par bovez e pus altrefois vous vousisez distreindre en les parcelles, ou les feffemenz sunt nombrez de acres, il meissent encontre vous les fetz voz auncestres qe velint nombre de acres, eux ne se poent vous oustier de vostre avowerie, qar il ount granté les fetz qe velent acres e altre tenemenz etc., mes ore venent il en temps a dire qe les acres e les autres tenemenz passent trestouz par un mesme service.

¹ The second and third letters of this word are represented by a contraction, and the fourth letter might be read as a c. It is perhaps intended for the word 'estourter' or 'estordre.' See p. 158 below. ² An error for 'barrer.'

escape from the acquittance by reason of the two feoffments which suppose a single service; therefore you could not in this case.

BEREFORD, C.J., to *Toudeby*. You impute to them a tort, to wit, a wrongful distress, which is a gross and an entirety, and then you seek to oust them from [their avowry] by two feoffments, which they suppose to be of different tenements, and made at different times, and between different persons. It seems to me that you must hold to one or the other of them.

Toudeby. Sir, we hold to the charter with which their great-grandfather enfeoffed our great-grandfather of the tenements in Wandisley, together with a fine which was levied between their grandfather and our grandfather of the third part of forty acres of land and eighty acres of wood in [Wandisley] in confirmation of the same gift, all which tenements were to be held by one and the same service. As to this we will abide by what you advise.

On another day BEREFORD, C.J., recapitulated all that has been stated above, and said to *Herle* :—

You have avowed for suit and homage, and they are ready to do the homage. As to the suit they wish to bar you by the deeds of your ancestors, to wit, by charter and fine.

To this *Herle* answered as above stated.

BEREFORD, C.J. You cannot be at one about the services until you are at one about the tenancy; for you say that they hold the lands of you by bovates, and they say that they hold them as the third part of a manor together with other lands and tenements contained in the fine etc.

Afterwards BEREFORD, C.J., said by way of counsel :—I believe that they say that they hold by the third part of a manor, so that if there were waste or other profit they might enjoy their share of the profit; for if they hold by bovates they will not have this advantage.

SCROPE, J., to *Herle*. If they were willing to grant to you that they hold by bovates, and then on another occasion you wished to distrain them in particular parts where the [lands of which they have been enfeoffed] are numbered by acres, [and] they put forward against you the deeds of your ancestors which speak of the number of acres, they could not oust you from your avowry, for they would have granted the deeds which speak of acres and other tenements etc. But now they come here in time to say that the acres and the other tenements all pass by one and the same service.

Et postea dixit *Ber.*, Lisez la chartre, qe dit qe lour besael avoit granté touz les tenemenz q'il avoit en le maner de C. forpris etc.

Beref. a Malm. Il ont avowé sur vous par certeine tenance; e les fetz qe vous mettez a la court ne especifie mie nule certeine tenance, einz dient 'totes les terres e les tenemenz,' qe n'est nent certain; e il covent primes estre en certain de la tenance enz ¹ qe vous poez pleder a les services, e pur ceo parlez ent, e mettez vostre response plus en certain.

Malm. alio die. Les tenemenz ou il ont fet cest destresce, nous le tenoms de eux par les services etc, estre la suite. Et la ou il dient qe nostre response ne est pas en certain de la tenance, nous dioms q'il est assez en certain a ceo qe nous semble, car la chartre voet q'il nous granta touz les tenemenz en Wandisley forpris etc. par la chartre en queu temps ceo fu terce partie del maner a cel houre quant les tenemenz passent par le feffement etc., e uncore est, coment q'il noment par bovez, e pus par la fin granta nombre des acres, e conferma par la fin le primer doun qe passa par la chartre a tenir par un mesme service etc.

Herry. Vous dites qe vous tenez de eux les tenemenz ou la destresce fut fete par terce partie de maner e des acres.

Herle. Nous dioms par bovez.

Scrop justice. En chescone pris des avers covent enquere un de iij choses *scil.* si vous tenez de lui les tenemenz, e par queux services, e si les services sunt arere. Ore il semble del houre q'il grantent tenir de vous les tenemenz ou la destresce fut fete, mes il dient q'il tenent par terce partie de maner e ne pas par bovez, e vous dites par bovez. Serroit ceo travers resceivable en cesti play de prise des avers, *quasi diceret non*?

Herry. Assez ont il mis lour replicacioun en certain, q'il tenent de vous etc. par les services etc. sanz suite etc. par quei etc.

Et ultimo oportuit *Herle* respondere ad servicia et dixit, Sire, il bient ouster nous de ceste avowerie par ij fetz. A queu de ceux volent il tenir?

Malm. A l'un e a l'autre, qar la chartre nostre besael, qe voet qe touz les tenemenz en tieu maner forpris etc., qe nous les tenoms

¹ MS. en.

Afterwards BEREFORD, C.J., said, Read the charter. .

The charter said that their great-grandfather granted all the tenements which he had in the manor of [Wandisley] except etc.

BEREFORD, C.J. (to *Malberthorpe*). They have avowed upon you for a certain tenancy, and the deeds which you produce to the court do not specify any certain tenancy, but say 'all the lands and the tenements,' which is not certain. It is necessary first of all to be certain of the tenancy before you can plead about the services. Therefore speak about the tenancy, and make your answer more certain.

Malberthorpe (on another day). We hold of them the tenements where they have made this distress, by the services etc. except the suit. And whereas they say that our answer is not certain as regards the tenancy we say that it is sufficiently certain as it seems to us, for the charter says that by the charter he granted us all the tenements in Wandisley except etc. And at that time when the tenements passed by the feoffment etc., they were the third part of the manor, and they are still, although the avowants name them by bovates. Afterwards he granted a number of acres by the fine and by it confirmed the former gift of that which passed by the charter to hold by one and the same service etc.

STANTON, J. You say that you hold of them the tenements where the distress was made by the third part of the manor and by acres.

Herle. We say that they hold them by bovates.

SCROPE, J. In every plea of replevin one of three things must be enquired, to wit, if [the plaintiff] holds the tenements of [the avowant], by what services, and if the services are arrear. Now it seems, since they grant it, that they hold of you the tenements¹ where the distress was made; but they say that they hold by the third part of the manor and not by bovates, while you say by bovates. Should this traverse be received in this plea of replevin? I think not.

STANTON, J. They have made their reply sufficiently certain, namely, that they hold of you etc. by the services etc. without suit etc., wherefore etc.

At last *Herle* was obliged to answer as to the services and said, Sir, they wish to oust us from this avowry by two deeds. To which of them will they hold?

Malberthorpe. To both; because [we hold to] the charter of our great-grandfather, which says 'all the tenements in that manor except

¹ This seems to be the meaning which the words are intended to convey; but the French text is not very satisfactory, and is possibly corrupt.

forpris etc., e la fin qe voet qe vostre ael graunta a nostre auncestre la terce partie de xl acres de terre e de iiij^{xx} acres de bois ensemblement ove touz les tenemenz q'il avoit en le maner de N. par les services etc. pur touz services. Et demandoms jugement, si pur suite arrere encontre les diz fetz puisse avower.

Herle. Et nous jugement desicom vous nous volez ouster de nostre avowerie par deus fetz si vous ne devez a un de eux tenir.

Et postea dies datus est partibus de iudicio suo audiendo in octabis sancte Trinitatis etc.

NOTA hic quod uxor Thome fuit summonita ut patet in recordo istius placiti. Et ego quesivi a *Ridenal* dubium ¹ istius; et ipse michi dixit tempore Iohannis de Methingham mulieres deberent sumoniri ad sectam uirorum sicut extranee et haberent essonia, et tempore R. de Hengham hoc non solebat fieri, set dictum esset in tali casu uiris quod haberent uxores; set modo debent sumoniri etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 218, Notts.

William of Gratton and Isabel his wife heretofore, to wit on the quindene of Easter ² last past, were attached by a writ on the statute to answer Thomas de Cressy on a plea why they took beasts belonging to Thomas and unlawfully detained them against gage etc. And whereupon Thomas by his attorney then complained that William and Isabel on [26 February 130⁸] the Wednesday next after the feast of St. Mathias the Apostle ³ Ed. II. in the vill of Selston in a place called Longeleye took two horses belonging to Thomas and unlawfully detained them against gage etc. until etc. Whereupon he says that he is injured and has damage to the value of one hundred shillings and thereof he brings suit etc.

The same William and Isabel on the day and year aforesaid were attached by another writ on the statute etc. to answer Thomas on a plea why they took beasts belonging to Thomas and unlawfully detained them against gage etc. And whereupon Thomas by his attorney then complained that William and Isabel on [11 March 130⁸] Tuesday the vigil of St. Gregory in the year aforesaid ⁴ in the vill of Selston in a place called Oldfeld took two horses belonging to Thomas and unlawfully detained them against gage etc. until etc. whereupon he says [*ut supra*].

And William and Isabel by their attorney then came and defended etc. And they acknowledged the takings aforesaid as good and lawful etc.; for they said that Thomas de Cressy and one Margery his wife hold as of the right of

¹ This word is written as 'du^m' in the MS. ² The proceedings in this Easter term will be found on *De Banco Rolls*, No. 181, r. 115. The avowry is somewhat differently stated here. ³ This is probably an error; see next note. ⁴ The vigil of St. Gregory fell on a Tuesday in 2 Edw. II. not 1 Edw. II.

etc., for we do hold the tenements except etc.; and [we hold to] the fine which says that your grandfather granted to our ancestor the third part of forty acres of land and of eighty acres of wood together with all the tenements which he had in the manor of [Wandisley] by the services etc. for all services. We ask judgment if he can against the said deeds avow for suit arrear.

Herle. And we ask judgment, seeing that you wish to oust us from our avowry by two deeds if you ought not to hold to one of them.

Afterwards a day is given to the parties for hearing their judgment on the octave of the Holy Trinity etc.

NOTE here that the wife of Thomas was summoned, as appears in the record of this plea. I asked *Ridenhale* the reason for this, and he told me that in the time of John of Metingham wives had to be summoned at the suit of their husbands like strangers, and they had their essoigns; and that in the time of Ralph of Hengham this was not wont to be done, but in such cases the husbands were told to produce their wives; but that now wives ought to be summoned etc.

Note from the Record (*continued*).

Margery one messuage and sixteen bovates of land in the vill of Selston (whereof the places in which etc. are part etc.) of William of Gratton and Isabel and certain persons William of Cressy and Joan his wife as of the right of Isabel and Joan by homage fealty and the service of eight pence and one pair of white gloves a year and for the king's scutage of forty shillings when it shall occur, thirteen shillings and four pence, and for more more etc. and for less less etc. and of doing to the court of Wadenesleye belonging to William and Isabel and William de Cressy and Joan from three weeks to three weeks; of which services one Ralph of Wadenesleye father of Isabel and Joan, whose heirs they are, was seised by the hands of Margery etc. And because the homage of Margery was arrear to William of Gratton and Isabel, William de Cressy and Joan, on the day of the first taking William etc. and Isabel in her name and as bailiffs of William de Cressy and Joan took the two horses for that homage etc. And also because the aforesaid suit was arrear to them for two years before the day of the second taking etc. they took in their name and as bailiffs etc. as is aforesaid the other two horses in their fee etc.

And Thomas said that he holds the tenements as of the right of Margery his wife without whom he cannot bring the services into judgment, and he prayed aid of Margery etc. and she being afterwards summoned came and joined herself to Thomas her husband, to wit on the octave of Michaelmas last past. And then came William and Isabel his wife etc. and avowed the takings aforesaid in the form aforesaid. And Thomas and Margery said that William and

Note from the Record (*continued*).

Isabel unlawfully avow the aforesaid taking for the aforesaid suit, for they said that one Nicholas of Wadenesleye the great-grandfather of Isabel and Joan whose heirs they are gave granted and with his charter confirmed to one Ranulph of Wandisley the great-grandfather of Margery whose heiress she is, the third part of all the land which Ranulph the father of Nicholas held on the day on which he died to hold to him and his heirs of Nicholas and his heirs, [saving¹ to Nicholas and his heirs the chief messuage which belonged to the father of Nicholas and saving the fishing of the pond belonging to Nicholas and saving the advowson of the church of Selston and saving the mansion which A. de Muschaump held in dower] rendering therefor annually to Nicholas and his heirs one pair of gloves on Easter Day for all service saving the foreign service etc. [Furthermore¹ Nicholas gave and granted to Ranulph and his heirs a mansion with an orchard wheresoever Ranulph might choose within the land aforesaid, saving the chief mansion which belonged to the father of Nicholas and the mansion of A. de Muschamp which she held in dower. And they produced a charter under the name of Nicholas the great-grandfather etc. which witnesses the gifts and grants in form aforesaid.] They said, moreover, that afterwards in the octave of St. Michael 20 Hen. III. before William of York and his fellows justices in eyre in the county of Nottingham a fine² was levied between one Ranulph the son of the aforesaid Ranulph of Wandesley the great-grandfather of Margery demandant and one Alexander of Wandesleye, grandfather of Isabel and Joan, whose heiresses they are tenant of the third part of forty acres of land and the third part of forty acres of wood in the vill of Wandisley, [whereupon an assize of mortdancestor was summoned between them etc.] to wit that Ranulph acknowledged the aforesaid third parts of the land and wood to be the right of Alexander. And for this etc. Alexander gave and granted to Ranulph the fourth part of all the land and wood with the appurtenances to wit that fourth part which is towards the west. Further Alexander granted to Ranulph nine acres of land in the same vill each acre measured by a perch of twenty-four feet, to wit those nine acres of land which lie in the wood of Dryhirst next the land of the Abbot of Dale [saving to Alexander and his heirs and his men of Wandesle, who previously had common there, common for all manner of their cattle after the corn and hay are carried away etc.] to have and to hold to Ranulph and his heirs of Alexander and his heirs together with all other lands and tenements which Ranulph previously held of Alexander in the same vill rendering therefor annually one pair of white gloves at Easter and doing the service of the third part of one knight's fee for all service and demand etc. And they produced a part of the fine which witnesses this etc. And they said that however William of Gratton and Isabel may avow etc. by the number of bovates etc. they hold the tenements in the aforesaid charter contained as a third part of the manor of Wadenesleye which as the third

¹ The words in brackets are not found in the Easter enrolment.

² The reference to this document is *Feet of Fines*, Case 182, File 7, No. 217.

Note from the Record (*continued*).

part of the manor came into the seisin of Ranulph the ancestor of Margery etc. to hold by the service in aforesaid charter contained etc.¹ And since then Thomas and Margery hold the tenements which remained to Ranulph the son of Ranulph the ancestor of Margery by the fine together with the aforesaid third part of the manor as a single tenancy and by one and the same service, to wit by homage and the service of one pair of white gloves for all service as in the fine is contained etc. And they asked judgment if William of Gratton and Isabel, against the deeds of the ancestor of Isabel whose heiress she is can avow any distress for the suit aforesaid in this behalf etc. And as to the homage etc. they said that William of Gratton and Isabel unlawfully avow etc. for they say that they have often offered to do and always till now have been ready to do homage, if they had wished to receive it.

And William and Isabel said that they cannot bring the premisses into judgment without William de Cressy and Joan his wife, parceners of Isabel etc. wherefore the sheriff was ordered to summon them to be here at this day, to wit the octave of St. Hilary to answer together etc.

And now came the parties aforesaid etc., and likewise William de Cressy and Joan came etc. and William de Cressy and Joan join themselves to William of Gratton and Isabel in answering etc. And William of Gratton and Isabel, William de Cressy and Joan avow the takings in the same form as before etc. upon Thomas and Margery their tenants etc. And they say further, as to the charter and fine by which Thomas de Cressy and Margery strive to exonerate the tenements from the aforesaid suit etc., that they ought not together and at the same time to answer to both deeds, nor ought Thomas and Margery to use both of them in this behalf, especially since the same deeds contain in themselves divers tenements, and were made between divers persons at divers times, and which by chance (*a casu*) could lead (*sortiri*) to different issues. They ask judgment etc., and that Thomas and Margery may hold themselves to that one of the deeds which they wish to use etc.

And Thomas and Margery say that they must exonerate themselves of the suit in this case as well by the charter as by the fine, because they say that William of Gratton and Isabel and William de Cressy and Joan demand the suit aforesaid as well from the tenements in the charter as in the fine severally contained etc.; and these tenements came into the seisin of the ancestors of Margery by divers grants of the ancestors of Isabel and Joan to hold by one and the same service to wit by homage fealty and the service of a pair of white gloves etc. for all service as is aforesaid, so that the charter and the fine are so bound (*in vicem se reliquant*) to one another as regards the service aforesaid that they cannot be separated, nor can

¹ In the Easter enrolment the replication continues thus: 'And they said that the vill of Wandisley is within the vill of Selston, and that the tenements

in which William and Isabel took the beasts are part of the tenements in the charter and fine contained.'

Note from the Record (*continued*).

Thomas and Margery exonerate their tenancy in this behalf unless by both deed of charter and fine etc. And they ask judgment etc. since William of Gratton and Isabel and William and Joan answer not to the deeds aforesaid etc.

A day is given them for hearing their judgment here on the octave of Trinity.

Afterwards, process being continued on either side till the morrow of All Souls 5 Ed. II. as well Thomas and Margery (by the same Thomas the attorney of Margery) as William and the others (by William Coterel their attorney) came. And a day is given them here for hearing their judgment thereof on the quindene of Easter, on the ground that judgment has not yet etc. Afterwards on the octave of Trinity 6 Ed. II. process on either side being continued as appears elsewhere the parties came by their attorneys. And William of Gratton and Isabel his wife William de Cressy and Joan his wife are in mercy for many defaults and William of Gratton and Isabel and William de Cressy and Joan make answer to the fine etc. And well they grant that that fine was levied between the parties but not of all the tenements in the avowry contained, as appears by the fine etc. And they say that after the levying of the fine they were seised of the suit by the hands of Thomas and Margery, and likewise the ancestors of Isabel and Joan, whose heirs they are, were in seisin thereof by the hands of the ancestors of Margery before the levying of the fine, and also from the time when the writ of novel disseisin runs and before. And since they are ready to aver their seisin and the seisin of the ancestors of Isabel and Joan of the suit aforesaid by the hands of Thomas and Margery and the ancestors of Margery continued from the time aforesaid, to wit before the levying of the fine and afterwards, as is aforesaid, [they] ask judgment if Thomas and Margery can now relieve (*deuoluer*e) or exonerate themselves of the suit etc.

And Thomas and Margery say in truth that although the fine was not levied of all the tenements etc. nevertheless the fine was levied of the aforesaid land and wood in the fine contained, which were parcel of the tenements aforesaid etc. to hold to Ranulph the ancestor of Margery, whose heiress she is, and his heirs, of Alexander, the ancestor of Isabel and Joan

53. LEDEWYCH *v.* HUGEFORD.¹*Replegiari.*

En une prise des avers entre Willam de Rodewyk e Water de Huggeford, Willam avowa par la reson q'il tent de ly lez ij parties du maner de A. par certeinz services, *scil.* par les ij parties de un fee de chivaler e lia la seisin dez services de cez auncestres par

¹ From *P.* This case is not reported in the other MSS.

Note from the Record (*continued*).

whose heirs they are together with all the other lands and tenements in the charter contained by the service of the third part of a knight's fee and of one pair of white gloves a year for all service, as in the fine is fully contained, as a single tenancy and by one and the same service quit and exonerated from the suit as is aforesaid.

Whereupon since William of Gratton and Isabel and the others acknowledge the fine by which the whole service of the tenancy of Thomas and Margery in this behalf as well of the tenements in the charter as in the fine contained is united [and that they] hold (*tenendi*) by the service aforesaid for all service in form aforesaid, [they] pray judgment if to any seisin of William of Gratton and Isabel William de Cressy and Joan which they put forward (*pretendunt*) of the suit after the fine levied or to any other seisin of the ancestors of Isabel and Joan of an anterior time in subversion of the fine they ought to answer, especially since by the levying of the fine all other services whatsoever except those in the fine noted are extinct etc.

And because William of Gratton and the others acknowledge the fine levied between the ancestors of Isabel and Joan and the ancestors of Margery as is aforesaid, which fine unites and binds (*annectit et religat*) the whole tenancy aforesaid as well of the tenements in the charter as in the fine etc., to be held by one and the same service, to wit by the service of the third part of a knight's fee and a pair of white gloves for all service quit of the suit and every other exaction etc. as the fine witnesses, and [since] the averment which William of Gratton and the others put forward of the seisin which they allege ought not to be admitted to exonerate the tenancy from the suit against the tenor of the fine, it seems to the court that William of Gratton, Isabel and the others unlawfully distrained for the suit etc. And therefore it is awarded that Thomas and Margery have their beasts delivered, and recover their damages which are taxed by the justices at one hundred shillings; and that William of Gratton and the others be in mercy.

Damages one hundred shillings, whereof to the clerks forty shillings.

53. LEDEWYCH *v.* HUGEFORD.

Replevin.

In a case of replevin between [Roger of Ledewych] and Walter of Huford [Walter] avowed for the reason that Roger held of him two parts of the manor of [S.] by certain services, to wit, by two parts of a knight's fee, and he laid the seisin of the services of

sa meyn demene; ou fut dit q'il tint certainz tenemenz, *scil.* xxiiij acres de terre etc. par un demi fee de chivaler; e dit qe M. avoit purchacé certainz tenemenz a la value del remenaunt du maner; et fut chacé a respoundre a la seisin etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 174, Salop.

Walter of Huford in mercy for several defaults etc.

The same Walter was summoned to answer Roger of Ledewych of a plea why he took the beasts of Roger and unlawfully detained them against gage and pledges etc. And whereupon Roger complains that Walter on [6 May 1306] the Friday next before Ascension Day 34 Ed. I. took six oxen belonging to Roger in the town of Shirefledewych¹ in a certain place which is called Ey and unlawfully detained them against gage and pledges etc. until etc. Whereupon he says that he is injured and has damage to the value of one hundred pounds and thereof he brings suit etc.

And Walter comes by his attorney and defends tort and force when etc. and he avows the taking as good and lawful, because he says that Roger holds of him two parts of the manor of Shirefledewych by homage fealty and the service of two parts of a knight's fee, to wit, for the king's scutage of forty shillings when it shall occur, two marks, and for more more and for less less and by doing suit to Walter of Huford's court from three weeks to three weeks, of which homage fealty and service one William of Huford Walter's father was seised by the hand of one Geoffrey, the father of Roger whose heir he is: and because two marks of the scutage were arrear to him

54. ANON.²

Replegiari, ou le tenaunt dit q'il tent ove un autre joint feffé et pria eyde de ly. Et fut osté pur ceo q'il fut soul attourné etc.

En un *replegiari*³ l'avowerie fut fet sur le⁴ tenaunt⁵ pleyntif⁶ pur certeynz⁷ services.⁸ Le tenaunt⁹ dit q'il fut feffé joint ove un autre¹⁰ et pria eyde.

Herle. Il soul se pleynt¹¹ et nous avoms avowé sur ly com sur nostre verrey tenaunt; et demaundoms jugement s'il pusse¹² noz services etc.

¹ Low Ledwich, adjoining Ludlow. ² From *C* collated with *M*, *P*, *Q*, *R*. The headnote is from *C*. ³ play de prise des avers, *M*, *R*. ⁴ certain, *M*, *R*. ⁵ persone, *M*. ⁶ *Om.* pleyntiff, *R*, *M*. ⁷ *Om.* certeynz, *M*, *R*. ⁸ *Ins.* arrere, *M*, *R*. ⁹ *Ins.* vint en court, *M*. ¹⁰ *Ins.* sanz qy, etc. *R*. *Ins.* issint q'il n'avoit forse fraunce tenement etc., sanz qi etc., *M*. ¹¹ *Ins.* de nous, *M*, *R*. ¹² *Ins.* delayer, *M*, *R*, delayer de, *P*.

Roger's ancestor by his own hand. To this it was said that Roger held certain tenements, to wit twenty-four acres of land etc. by half a knight's fee; and that M. had purchased certain tenements to the value of the rest of the manor. Roger was driven to answer to the seisin etc.

Note from the Record (*continued*).

for the year 28 Ed. I. he took three oxen etc., and for two other marks of scutage arrear for the year 31 Ed. I. he took the other three oxen belonging to Roger in the aforesaid place which is parcel of the two parts of the manor as well he might.¹

And Roger says that Walter cannot avow the takings as lawful etc. for he says that he holds of him five messuages four hundred acres of land thirty acres of meadow forty acres of wood and forty acres of moor in Ledewych only by homage fealty and the service of a moiety of a knight's fee for all services, and not by the service of two parts of a fee etc. as Walter in his avowry asserts, and this he is ready to aver etc.

And Walter says that Roger holds of him two parts of the manor by the service of two parts of a knight's fee and that William of Hugeford father of Walter was seised by the hands of Geoffrey the father of Roger whose heir he is of scutage for two parts of the manor as is aforesaid and of this he puts himself upon the country.

Issue is joined and a *uenire facias* awarded here for the morrow of St. John the Baptist.

54. ANON.

A case of replevin, in which the tenant said that he held with another who was jointly enfeofed with him. The tenant prayed aid of his joint feoffee. He was ousted from aid because he alone attorned etc.

In replevin the avowry was made upon the tenant for certain services. The tenant said that he was jointly enfeofed with another, without whom etc., and prayed aid of him.

Herle. He alone complains, and we have avowed upon him as upon our very tenant. We ask judgment if he can delay us from our services.

¹ The words 'Cras Pur.' are here written in the margin.

Et a ceo fut dit¹ s'il soul pledast l'autre serreit chargé, et² s'il declamast le seignur³ n'avereit mye avantage vers ly soul.⁴

Pass. Vous estez soul attourné a nous.

Et fut osté del eyde.⁵

[*Pass.*⁶ Jugement de la pleynte desicom il ad conu q'il est joynt tenaunt ove une autre. Jugement, ou la plainte serreit en commune et nent a lui soule, qe si la prise fut fet des bestes pris en lour commune, depus qe la chose fut usé com lour commune profit, la plainte serroit en lour deux nouns, par quei etc.]

55. ANON.⁷

Replegiari. Avowerie en la commune de pasture et l'avowerie mauveyse etc.

Adam Benteley avowa la prise sur un abbé⁸ en mesme le leu qe l'abbé counta, et par la resoun qe l'abbé tent de ly ij toftes par certeyn services et pur lez services etc. si avowe il en⁹ le leu etc.¹⁰ qe ne fut deynz le ij toftes.

L'abbé demaunda jugement desicom il avoit avowé pur rente service issantz de certeynz tenemenz hors de la place ou il ad avowé, qe n'est mye de ley avowable ; et demaunda jugement.

Adam dit qe il est chef seignur de mesme la ville et qe le leu ou la prise fut fet si est commune de pasture a tute la ville et dit qe ben list a ly a¹¹ fere destresce pur rente arriere en la commune de pasture etc. appendant al soille dount sa rente est¹² ; et demaundoms jugement.

Et pur ceo qe Adam aillours qe¹³ en le leu ou¹⁴ sa rente sourdy¹⁵ destreyrna, fut agardé qe l'abbé alast ove sez avers etc.

¹ *Ins.* qe, *M*, *P*, *Q*. ² Estre ceo, *M*, *R*. ³ *Om.* le seignur, *M*. *Ins.* il, *M*.

⁴ *For* vers ly soul *subs.* q'est doné au seignur, *R*, *Sim.* *M*. ⁵ *Om.* Et . . . eyde, *M*. *Add* par *Ber.*, *R*. ⁶ The rest of the report, which is not found in *C*, *Q*, *R*, is from *M*. There are no variants of interest in *P*. ⁷ From *C* collated with *Q*. ⁸ *Ins.* etc. *Q*.

⁹ et, *Q*. ¹⁰ *Om.* etc. *Q*. ¹¹ pur, *Q*. ¹² *Om.* est, *C*. ¹³ *Om.* qe, *Q*.
¹⁴ dont, *Q*. ¹⁵ sourde, *Q*.

To that it was said that, if he pleaded alone, the joint feoffee would be charged, and if he disclaimed, the lord would not have the advantage which is given to the lord against him alone.

Passeley. You alone attorned to us.

The tenant was ousted from his aid by BEREฟอร์ด, C.J.

*Passeley.*¹ We ask judgment of the plaint, seeing that he has acknowledged that he is joint tenant with another, in which case the plaint should be in common and not on his part alone; for if the taking were made of beasts seized in their [common tenancy], the plaint should be in their two names, since the property was used for their common profit. Therefore etc.

55. ANON.²

Replevin. Avowry in common of pasture, and it was bad etc.

Adam Bentley avowed the taking upon an abbot in the place of which the abbot counted, and for the reason that the abbot held two tofts of him by certain services, and for the services etc. he avows in the place etc. which was not within the two tofts.

The abbot asked judgment on the ground that Adam had avowed for rent service issuing out of certain tenements which were outside the place where he avowed the taking; and such an avowry is not by law allowed. He asked judgment.

Adam said that he was the chief lord of the same vill, and that the place where the taking was made is common of pasture for all the vill; and he said that well he might make a distress for rent arrear in the common of pasture appendant to the soil, whence the rent issued. [He asked] judgment.

And because Adam distrained elsewhere than in the place where the rent issued, it was awarded that the abbot should go quit with his beasts etc.

¹ See note 6 opposite.

² A report of this case appears in

Year Book, 33-35 *Edw. I.* (Rolls Series), p. 495.

56. GREN *v.* BEREWYK.I.¹

Un homme counta vers un altre qe a force e as armes avoit prys iiij tailles par lez quex il li fut tenuz en x livres nomement par une taille taunt etc. et sic de aliis.

Pass. N'entendoms pas qe a tel bref devez estre respondu, qe taile n'est pas suffisaunte especialté a demaunder dette. E d'autrepart si l'enqueste passat encountre nous il recovereit sez damages a l'amounte de la dette e unqore ly demorreit sa accioun par bref de dette.

Migg. Nous avoms counté vers vous qe a force e as armes *ut supra*, a quei vous ne responez nent. Jugement etc.

Pass. De riens coupable, prest etc.

Et alii econtra.

II.²

Un A. porta bref de trespas vers lui et counta qe a force et as armes avoit pris iiij tailles par les queux il y fut tenu en x livres, nomement par un taille.

Pass. Il ne deit estre respondu, qe il ne dit qe taille fut suffisaunt chose a ly en ly³ a tel accioun. D'autrepart si nous respondissoms outre et fussoms atteint, il recovereit damages a la mountaunce de la dette et unqore demurreit sa accioun.

Malb. Taille est assez suffisaunt en ley marchaund, et nous sumes pleint de un trespas fet contra pacem etc., a quei vous ne responez nent. Jugement.

Pass. De rien cople,⁴ prest etc.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 165, London.

John of Berewyke was attached to answer Bodin of Gren of a plea why with force and arms he snatched (*eripuit*) from the hands of Alice, Boidin's wife at London, four tallies belonging to Boidin, whereby John was holden to Boidin in ten pounds twelve shillings and seven pence, and maliciously broke those tallies and burnt them and inflicted on him other enormities to Boidin's grievous loss and against the peace etc. And whereupon Boidin complains by Robert Broun that John of Berwyke on [22 Mareh 130 $\frac{1}{2}$] Friday

¹ From *P.* There is no headnote to either of the reports of this case.

² From *M.* ³ An error for 'ley.' ⁴ An error for 'coupable.'

56. GREN *v.* BEREWYK.

I.

One man counted against another that the latter had taken with force and arms four tallies, by which the defendant was bound to him in ten pounds, to wit, by one tally in so much, by another etc.

Passeley. We do not think that on such a writ you should be answered, for a tally is not sufficient specialty for demanding debt. Moreover if the inquest passed against us, the plaintiff would recover his damages to the amount of the debt, and still his action would remain to him by writ of debt.

Miggeley. We have counted against you that with force and arms (as above stated) and to this you do not answer. Judgment etc.

Passeley. Not guilty. Ready etc.

And the others to the contrary.

II.

One A. brought a writ of trespass against [another] and counted that the defendant had taken four tallies by which he was bound to him in ten pounds, to wit by one tally [so much, by another etc.].

Passeley. He ought not to be answered, for he does not say that a tally was sufficient in law for him for such an action. Moreover if we answer further, and should be attainted of the trespass, he would recover damages to the amount of the debt, and his action of debt would still remain to him.

Malberthorpe. A tally is sufficient in the law merchant; and we complained of this trespass made against the peace etc., and to this you do not answer. Judgment.

Passeley. Not guilty. Ready etc.

Note from the Record (*continued*).

before Mid Lent 1 Ed. II. with force and arms etc. snatched four tallies belonging to Boidin, to wit¹ . . . , for meat (*carnibus*) received from Boidin by the hands of Adam Bernard, William le Keu and Ingram the servant of John from the hands of Alice his wife etc. at London and those tallies maliciously broke and burnt etc. against the peace etc. And whereupon he says that he is injured, and has damage to the value of ten pounds etc.; and thereof he brings suit etc.

And John comes by John of Laufare his attorney and defends tort and force, when etc. And . . .²

¹ Particulars of the debts are here stated.

² The case here ends abruptly.

57. WENDLYNG v. WARE.

I.¹

Trespas de estrepiement de mesons q'est apres l'enqueste prise tauntqe la seisine soit liveré.

Un home porta soun bref de trespas d'estrepement de mesons nomement etc.

Launf. Pus jugement rendu tauntqe² al jour de la seisine liveré nul trespas fait, prest etc.

Hengham. Nostre bref suppose³ qe apres l'enqueste prise⁴ par le *nisi prius* avaunt la seisine liveré vous aviets fait estreppement.

Stanton. Yl ni ad nul meen temps entre le jour dil enqueste prise par le *nisi prius* et le jugement rendue, par quei responez a soun bref.

Pass. De rien coupable, prest etc.

Et alii econtra.

II.⁵

Un A. porta bref de trespas sur l'estatut de Gloucestre et counta nul counte, mes assigna l'estrepement issi, par la ou mesme cesti A. porta bref vers B. et demaunda vers lui certain tenemenz devant justices a W.⁶ a xv^{me} de saint Martin l'an etc. le avaunt dit B. eintz q'il pout aver sa seisine fit estrepment, *scil.* le Samady prochein⁷ apres la saint Andre et la Dymaigne et le Lundy et le Mardy fit couper les arbres leins et feins⁸ a sa damage et en despit de roy.

Wilb. defendit et dit qe le Samady avaunt la feste saint Andre si est le iiij jour de la xv^{me} avaunt dit⁹ quel jour rien ne put estre fet del ple et il se plede un trespas fet apres jugement einz q'il pout aver seisine, et le jour q'il assigna fut avaunt jugement, purquei etc. (Et non allocatur.)

Wilb. De rien coupable, prest etc.

Et alii econtra.

¹ From *B* collated with *G* and *P*. The headnote is from *G*. ² jeques, *P*. ³ veut, *P*. ⁴ passé en pays, *P*. ⁵ From *M*. ⁶ It is probable that some words are omitted here and that the date mentioned is that on which the judgment for recovery of seisin was given. ⁷ This looks like an error for 'avaunt.' See next speech. ⁸ Perhaps these words are written in error for 'keins e freins.' ⁹ The word 'avaunt' seems to have been omitted here.

57. WENDLYNG *v.* WARE.I.¹

A case of trespass for estrepment of houses, after an enquest had been taken and before seisin had been delivered.

A man brought his writ of trespass for estrepment of houses, namely, etc.

Laufare. After judgment was rendered and until the day when seisin was delivered, no trespass have we done. Ready etc.

Hengham. Our writ supposes that you did the estrepment after the enquest was taken by the *nisi prius* and before the delivery of seisin.

STANTON, J. There is no mean time between the day when an enquest is taken by the *nisi prius* and the day when judgment is rendered thereon, so answer his writ.

Passeley. Guilty of nothing, ready etc.

The others to the contrary.

II.²

One A. brought a writ of trespass based upon the statute of Gloucester,³ and counted no count, but assigned the estrepment thus 'whereas this same A. brought a writ against B. and demanded certain tenements against him before the justices at Westminster [and recovered seisin] on the quindene of St. Martin,⁴ in the year etc., the said B. before A. could have seisin made estrepment, to wit the Saturday next [before⁵] St. Andrew's Day and the Sunday Monday and Tuesday following he caused trees to be cut [oaks⁶ and ashes], to his damage and in contempt of the king.

Willoughby defended and said that the Saturday⁷ before the feast of St. Andrew is the fourth day of the quindene aforesaid, on which day nothing could be done about the plea. He is pleading, [he said], about a trespass done after judgment and before he could have seisin; but the day which he assigned was before judgment. Therefore etc. (The plea was not allowed.)

Willoughby. Guilty of nothing, ready etc.

The others to the contrary.

¹ This report appears in the Old Edition on p. 98.

² It is possible that this is the report of a different case, but the dates here mentioned (which are not in accordance with the record in *Wendlyng v. Ware*) were perhaps inserted by way of illustration.

³ 6 Edw. I. c. 13. The writ under the Statute was for estrepment *pendente placito*, but, notwithstanding the express mention of the Statute, the

report seems to relate to a case of estrepment after judgment.

⁴ This was probably the return day when judgment was given. See note 6 opposite.

⁵ See note 7 opposite.

⁶ See note 8 opposite.

⁷ The Saturday before St. Andrew's Day was the 14th day of the quindene in 4 Edw. II. (1310). The dates in this report may be merely illustrative.

Note from the Record.

De Banco Rolls, Hil., 4 Edw. II. (No. 184), r. 164, Norfolk.

Thomas the son of Stephen of Ware in mercy for several defaults etc.

The sheriff was ordered,¹ that whereas the abbot of Wendlyng lately in the king's court here recovered his seisin against Thomas the son of Stephen of Ware of one messuage and eight acres of land in Oxeburgh by a certain jury between them taken thereof before the king's beloved and faithful Hervey of Stanton at Norwich in the county of Norfolk, the aforesaid Thomas after the taking of the inquisition and before the abbot could obtain (*consequi*) his seisin of the tenements extirpated and carried away forty ashes of the price of four pounds and twenty appletrees of the price of forty shillings growing on the said messuage in contempt etc. of the king and his court etc. and to the no slight loss of the abbot etc.² And whereupon the abbot complains that, whereas the inquisition was taken at Norwich before the aforesaid Hervey on [11 September 1309] the Thursday next after the feast of the Nativity of the Blessed Mary 3 Ed. II., the aforesaid Thomas on the Friday next after the taking of the inquisition and from day to day continuously until [20 October 1309] the Monday after the quindene of St. Michael next following did to him the trespass aforesaid in contempt of the

58. DIVERS NOTES.

(a)³ *Nota.* La ou homme se plaint d'une beste prise et nient de plusours come d'un tor ou d'un cheval ou d'un boef etc., il ne purra my enlarger s'avowere, tout soit issint q'il y furent⁴ plusours prises etc. Mess'il se plient de plusours bestes etc. et dit en soun bref 'aeria illa,'⁵ porra enlarger s'avowere de plus des bestes qe le pleintiff n'est pleint. Et hoc secundum opinionem quorundam.

(b)⁶ La vicounte retourna en un *monstravit*, 'quod non est inuentus'; Et pur ceo q'il se dota d'estre utlagé il vynt au jour qe doné lui fust par le bref, et fit demaunder la partie, qe ne vynt pas, Par quey fut agardé q'il ne prist rien par son bref. Et pur ceo qe la partie demaundé ne fut pas partie a ly, pur q'il n'aveit pas jour par le original, mal l'enroulement, dust dire 'et alias'⁷ optulit se quod talis, qui tulit breue suum non est prosecutus etc.; ideo etc.' Intrabatur.

¹ For earlier process see *De Banco Rolls*, No. 180, r. 129d. The enrolment of the original action has not been found. ² This 'etc.' at the end of the recital represents the order to the sheriff to cause the parties to come. ³ From *B* collated with *G*. ⁴ *urent*, *G*. ⁵ For *illa*, *subs. il*, *G*. ⁶ From *R*. ⁷ The words 'et alias,' represented in the MS. by 'et al,' are probably intended to be read as 'Et talis.'

Note from the Record (*continued*).

king and his court etc. Whereupon he says that he is injured and has damage to the value of one hundred pounds; and thereof he brings suit etc.

And Thomas comes and defends tort and force when etc. And well he denies that he did to him the trespass aforesaid, as the plaintiff imputes to him. And of this he puts himself upon the country.

Issue is joined and a *venire facias* awarded here for the morrow of St. John the Baptist.

Afterwards a month after Easter 7 Ed. II. [5 May 1313] the parties came by their attorneys, and likewise a jury chosen by the consent of the parties, who say upon their oath that one John the servant of the aforesaid Thomas by the precept of Thomas, after the inquisition taken before the aforesaid Hervey and before the abbot had obtained seisin of the tenements, in and on the year and day aforesaid did the aforesaid trespass to the abbot, in contempt of the king and his court to the damage of the abbot of one hundred shillings. Therefore it is awarded that the abbot recover against him his damages aforesaid and that Thomas be taken.

Afterwards on the morrow of the Ascension 7 Ed. II. Thomas came here in court and freely rendered himself to prison etc.

Afterwards Thomas made fine with the king for the trespass by twenty shillings by the pledge of John of Theford of the county of Norfolk. Therefore let him be delivered etc.

58. DIVERS NOTES.

(a) *Note*.¹ Where a man makes his complaint of one beast taken and not of several beasts, as for example of one bull, or one horse, or one ox etc., the avowant cannot enlarge his avowry, even though it were the case that several beasts were taken. But if the plaintiff makes his complaint of several beasts etc., and says in his writ '*aueria illa*,' the avowant can enlarge his avowry with more beasts than those of which the plaintiff complains. And this is the opinion of some people.

(b) The sheriff returned on a writ of *monstravit*, '*quod non est inuentus*.' And because the defendant was afraid of being outlawed, he came at the day which was given him by the writ, and demanded the [plaintiff] who did not come. Thereupon it was awarded that the plaintiff take nothing by his writ. And because the plaintiff who was demanded was not a party to the defendant, because he had not this day given him by the original, the enrolment was bad. It should have said '[Such² an one] offered himself [against such an one etc.]; and because he who brought the writ did not prosecute etc. therefore etc.' [And thus] it was entered.

¹ This note appears in the Old Edition on p. 98.

² The French text is corrupt here, and it is not evident how the enrolment

should be made. Apparently the point is that nothing must be said about the plaintiff not having come on the day given to the accountant.

(c)¹ En le *monstravit* le vicounte retorne 'quod non est inuentus nec habet etc.,' qe mes qe le defendaunt voille averer par pais par le *testatum est* q'il ad asset en autre counté il ne avera mie le *testatum est*.

(d)² Un bref fut porté vers tenant, qe dit qe quant a parcel de vostre demaunde, jeo n'ay riens si noun joynt ove nostre femme nent nomé etc. Jugement.

Heyham.³ Quei responez al remenant ?

Lauf. C'est un precipe et ⁴ s'il abate en partie, il abatera en tut. Hoc non obstante, il fut chacé a respondre outre.

(e)⁵ *Nota* ou tenant par la leye d'Engleterre fut resceu al *cessavit per byennium*, et dit qe lez tenemenz fuerent overtz a la destresce.

(f)⁵ La ou Jon le fiz Willem de B. appella la persone de C. e mult des ⁶ autres de roberye lez queus se ⁷ mystrent en pays. Et pur ceo qe lez justices vierent qe l'appellour fut deynz age, il anenterent l'appelle sanz chalange de la⁸ partie, pur ceo qe l'appellour fut tel q'il ne pout ⁹ nent fournir ceo qe l'appelle voleit, sauve autre foiz soun appelle quant il vendra a soun age.

(g)¹⁰ Une femme porta soun bref de dowere etc.

Tiltone. Quant a taunt dez tenemenz il n'ad rienz si noun joynt ove un tel par ceste chartre. (E mist avaunt chartre qe ceo testmoigne.) E quant a taunt si rend il par congé.

Et la chartre de joynt feffement n'abatist pas le bref pur ceo qe ceo fut bref de dowere, en quel cas bref n'est pas abatable par noun tenure de parcele; ne nent plus par chartre de joynt feffement, pur ceo q'il covent qe le tenaunt respoynge de sa tenaunce.

(h)¹⁰ Home dit, si jeo face moun vileyn moun attourné a sure pur moi en court qe porte recorde, q'il est enfraunchy par taunt, qar jeo ly met en liu de franc home. Quere tamen.

(i)¹⁰ *Nota* en bref de mortdauncestre si le tenaunt eyt vouché a garaunt, e le vouché fet defaute il fra resomoné auxi ben cum le tenaunt s'il ust fet defaute.

¹ From *R.* ² From *C* collated with *P* and *Q*. ³ Hengham, *P*, *Q*. ⁴ *For* et, *subs.* qe, *P*, *Q*. ⁵ From *C* collated with *Q*. ⁶ *Om.* des, *Q*. ⁷ *Om.* se, *Q*.
⁸ *Om.* la, *Q*. ⁹ poeit, *Q*. ¹⁰ From *P*.

(c) On a writ of *monstravit* the sheriff returns *quod non est inuentus nec habet etc.* for although the defendant wish to aver by the country on the *testatum est* that he has assets in some other county he will not have the *testatum*.¹

(d) A writ was brought against a tenant, who said:—As to parcel of your demand I have nothing except jointly with my wife who is not named etc. Judgment.

Ingham. What do you answer as to the remainder ?

Laufare. This is a Precipe and if it abates as to part, it will abate as to all.

Notwithstanding this, the tenant was driven to answer further.

(e) *Note* that a tenant by the courtesy was received to answer a *cessavit per biennium*; and he said that the tenements were open to distress.

(f) One John the son of William of B. appealed the parson of C. and many others of robbery and they put themselves on the country. And because the justices saw that the appeallor was within age they annulled the appeal without there being any challenge on the other side, and this was because the appeallor could not perform what the appeal required; and they saved to him his appeal when he should come to his full age.

(g) A woman brought her writ of dower etc.

Tilton. As to so much of the tenements we have nothing save jointly with such an one by this charter. (He put forward a charter which witnessed this.) And as to so much we render it by leave of the court.

And the charter of joint feoffment did not abate the writ, because it was a writ of dower; and in that case a writ is not to be abated by non-tenure of parcel, nor is it by charter of joint feoffment, because it is necessary that the tenant answer for his tenancy.

(h) It is said, that if I make my villain my attorney to sue for me in a court which bears record he is enfranchised thereby, for I put him in the place of free man. But I question this.

(i) *Note*. In a writ of mortdancestor if the tenant has vouched to warranty, and the vouchee makes default he will be resummoned just as the tenant would if he had made default.

¹ If the defendant has lands by which he can be distrained to render an account the writ of *monstravit* can be abated.

(k)¹ *Nota* qe vikere priera eyde del patron et l'evesqe e de la persone.

(l)² *Nota* qe ou le tenant devant justices assigné dist qe assise ne devoit estre, qar il entra par jugement suz un bref d'entré, par quei le record fust mandé en banke. A queu jour le tenant vient par baillif, e usa mesme la excepcion.

Hervy. Ceste exception si est a barrer l'assise, et vous baillif ne poez nent user excepcion qe soit a barrer l'assise, par quoi ceste court agarde qe l'assise courge, et vous pleintif suiez le record as justices assigné de prendre l'assise.

(m)³ *Nota* qe la ou le tenant voucha a garant, e le garant fist defaulte. A queu jour le Grant *Cape ad ualenciam* fust returné. E en le mien temps le tenant purchaca la quitance le demandant e mist a la court.

Ber. (al tenant). Donqe volez resortir de vouchier e user la quitance?

Hedon. Oyl.

Bereford (au demandant). Est ceo vostre fet?

Le demandant. Sire, oyl.

Si agarde la court qe vous ne preignez rien par vostre bref etc.

(n)⁴ *Nota* qe la ou A. porta bref d'entré vers B. B. vient e dit, qe A. ne poeit accion avoir, q'il avoit releissé e quite clamé en sa seisine. Jugement etc. Et de ceo mist avant fet a la court qe ceo tesmoigna, mes dist au fin 'Doné a Linlisco en Escoce etc.' Et de ceo fut chalengé, et non valuit.

(o)⁵ *Nota* qe un bref d'entré qe un abbé porta.

Denham. Jugement de cestui bref desicom il n'est pas nommé par noun de baptesme. Et d'altrepart il dit le abbé de tieu lieu e nome nent le seint del eglise dount il est abbé.

Et *Trikingham* quassaut utramque excepcionem.

Denham q'il ne lessa point, prest etc.

Et alii contrarium.

¹ From *P* (fo. 60 v°).

² From *Y* (fo. 36 r°).

³ From *Y* (fo. 96 v°).

⁴ From *Y* (fo. 97 r°).

⁵ From *Y* (fo. 98 r°).

(k) *Note.* A vicar will pray aid of the patron, the bishop and the parson.

(l) *Note.* The tenant before justices assigned to take assizes said, that assize there ought not to be, for he entered by judgment on a writ of entry. Thereupon the record was sent into the Bench. At the day given the tenant came by bailiff, and used the same exception.

STANTON, J. This exception is to bar the assize and you as a bailiff cannot use an exception to bar the assize. Therefore the court awards that the assize proceed, and do you plaintiff sue the record to the justices assigned to take the assize.

(m) *Note.* The tenant vouched to warranty, and the warrant made default. At the day given, the Great *Cape ad ualenciam* was returned. In the meantime the tenant had purchased an acquittance from the demandant, which he produced to the court.

BEREFORD, C.J. (to *the tenant*). Then will you abandon your voucher and use the acquittance?

Hedon. Yes.

BEREFORD, C.J. (to *the demandant*). Is this your deed?

The Demandant. Yes, Sir.

The court awards that you take nothing by your writ.

(n) *Note.*¹ A. brought a writ of entry against B. B. came and said that A. could not have an action, for he had released and quit-claimed [the tenements] in B's seisin. Judgment etc. And he produced the deed to the court which witnessed this. But it said at the end 'Given at Linlithgow in Scotland etc.' He was challenged as to this, and it was of no avail.

(o) *Note.* A writ of entry brought by an abbot.

Denham. Judgment of this writ, since the abbot is not named by his baptismal name. And furthermore he calls him abbot of such a place, and does not name the saint of the church whereof he is abbot.²

TRIKINGHAM, J. quashed both exceptions.

Denham. We say, that he did not lease. Ready etc.

And the others to the contrary.

¹ This case has not been found. There is however on the rolls of this term a case (*Lovetot v. Dean*) in which the tenant vouched to warranty by a deed made at 'Pert.' The enrolment states that he was asked in what county 'Pert' lay and he said in Essex. It is not unlikely that it was suggested by way of objection in this case that

Pert was Perth in Scotland (*De Banco Rolls*, No. 184, roll 119).

² Cases in which neither the baptismal name of an abbot nor the name of the saint of his church is stated are not uncommon. See for instance the case of the Abbot of Shrewsbury on p. 96 above.

(p)¹ A. ke fu femme B. porta son bref de dowere vers G. Le quel G. fit defaute, par quei le Grant Cape fut issue e retorné. A queu jour Alice apparust par attorné et G. ensement.

Scrope. Quei demandez vous ?

Et attornatus proposuit dicere demandam.

Et postea *Hervi* conniuit super eum.

Et attornatus dixit postea :—Jeo me tienke a la defaute tut attrenché (Car s'il eust nomé sa demande il eust relessé la defaute e pledé en chief.)

Scrope. Sire, nous vous dioms qe nous tenoms les tenemenz, dount ele fet sa demande, joint ove Alice nostre femme e par ceste chartre. Et demandoms jugement de cestui bref.

Bereford. L'attorné se tient a la defaute tut attrenché, qe vous avez fet, e tanqe vous eez cele defaute savé vous ne poez estre receu al abatement du bref, (quod pluribus mirabatur ² et modo est lex).

Scrope. Sire, nous defendoms la somonce.

Bereford. Trovez plegges de la lei.

Et sic stetit.

(q)³ Alice ke fu femme C. porta sun bref de dowere vers D. Alice e D. pristeront un *prece parcium* a primer jour e a l'autre jour D. fiste defaute. L'attorné A. pria jugement de sa defaute apres apparance.

Hervi. Quei, voudrez vous aver le Petit [Cape] la ou vous n'avez mis vostre demande, ne nule rien mis en roulle, qe serroit garant al Petit Cape ?

L'attorné. Sire, qe froms nous ?

Hervi. Alez, si vous purchacez novel bref, ou suiez bref qe le tenant soit somonez.

Bereford. Le *prece parcium* fut malement granté sanz ceo qe la demande fut mis en certain.

Et pus *Ber.* fit demander le tenant e ne vient nent.

Bereford. Suez le Grand *Cape* pur ceo ke la demande n'est pas en certain. Et dites, 'quare non seruauit diem sibi datum coram iusticiariis apud Westmonasterium etc.

Killeby et *Langalle* clerici dixerunt sepe uiderunt istum casum, et sic in omnibus casibus ubi demanda non comprehenditur in breuibz originalibus.

¹ From Y (fo. 142 r°).

² MS. 'Mirabantur.'

³ From Y (fo. 143 r°).

(p) A. who was the wife of B. brought her writ of dower against G., who made default. Thereupon the Great *Cape* issued and was returned. At the day given Alice appeared by her attorney and G. likewise.

Scrope. What do you ask?

The attorney began to state his demand. And afterwards STANTON, J. winked at him.

The attorney said afterwards: 'I betake myself to the default strictly': for if he had stated his demand he would have released the default and pleaded on the principal matter.

Scrope. Sir, we tell you that we hold the tenements, for which she makes her demand, jointly with Alice our wife, and by this charter. We ask judgment of the writ.

BEREFORD, C.J. The attorney betakes himself strictly to the default, which you have made, and until you have purged that default you cannot be received to abate the writ. (This seemed strange to many, but now it is the law.)

Scrope. Sir, we deny the summons.

BEREFORD, C.J. Find pledges of your law.

And so the matter stood.

(q) Alice who was the wife of C. brought her writ of dower against D. Alice and D. took a *prece parcium* on the first day, and on the next day D. made default. The attorney of A. prayed judgment of his default after appearance.

STANTON, J. What! Would you have the Little *Cape* when you have put neither your demand nor anything else on the roll, which would be a warrant for the Little *Cape*?

The Attorney. Sir, what are we to do?

STANTON, J. Go and purchase a new writ, or sue a writ that the tenant be summoned.

BEREFORD, C.J. The *prece parcium* was wrongly granted, if the demand was not put in certainty.

Then BEREFORD called the tenant, who did not come.

BEREFORD, C.J. Sue the Great *Cape*, because the demand is not a certain one; and say because he did not keep the day given to him before the justices at Westminster etc.

Killeby and *Langalle* clerks said that they had often seen this case; and so in all cases where the demand is not comprised in the original writs.

(r)¹ *Nota* qe la ou un Jon voleit avoir fet un recognisance a B de C. de xiiij livres.

Hervi. Nous ne receverom point par bille la recognisance de si grant somme deners²; mes alez a vostre bref de dette, e puis puit il par le precipe rendre la dette, e ceo est plus suer pur vous.

Et jeo vy en mesme le terme la recognisance estre pris de C. livres.

(s)³ *Nota* quod generalis attornatus potest facere specialem attornatum uel attornatos⁴ pro domino suo per billam in curia que recordum habet. Et hoc uidi in eodem termino ubi generalis attornatus uenit in banco coram. Iohanne de Benestede et fecit specialem attornatum pro domino suo in quinque breuibz non obstante quod cancellaria fuit in uilla de Haltheburn.⁵ Ego quesui a Ricardo de Halthebourn et ipse dixit quod communis consuetudo est illa, licet cancellarius fuerit absens uel presens, in omnibus placiis iusticiariorum etc.

(t)³ *Nota* qe *Willeby* pria un resummons.

Ber. Ou est le record?

Willeby. Sire, en la tresori. E volez pur charité mander bille as chamberlains q'il facent venir devant vous le record, par quei nous pooms avoir un resummons?

Hervi a *Willeby*. Vous volez faire damage a vostre client? qar autrefeez avom abatu tele resummons qe vindrent ceinz par tel proces.

Ber. Swiez bref de la chauncellerie a tresorer e a chamberlains q'il nous mandent le record e puis averez vostre resummons par due proces.

(u)³ *Nota* quod ego quesui a pluribus, si le termour aportera la *uestura seminis* durant le terme cresant su la terre apres le terme compli. Omnes pro maiori parte dixerunt quod non, qar ici maynovereit il autri soil encontre covenant. *Serdelowe* dixit qe de equité il avereit son crop etc.; set *Mugg.* dixit quod non, quia 'conuencio dirrogat legi.' Et ideo discat unusquisque terminarius quod habeat terminum suum sub tali tempore quod habere posset croppum suum sine calumpnia.

¹ From Y (fo. 244 r°).

² The MS. has 'd'auer,' but 'deners' or 'd'argent' is probably the correct reading.

³ From Y (fo. 244 r°).

⁴ MS. attornat.

⁵ The words 'de Haltheburn' have been cancelled by a line through them; but a line of dots has been added under the words, which are probably intended to denote that they are to be read as part of the text, notwithstanding the cancellation. These dots, however, seem to be the work of an owner or reader of the MS. rather than that of its scribe.

(r) *Note.* John wished to make a recognisance of fourteen pounds to B. of C.

STANTON, J. We will not receive the recognisance of so large a sum of money by bill; but do you betake yourself to your writ of debt and then he can render the debt to you by the precipe. That will be more sure for you.

And I saw in the same term a recognisance made for one hundred pounds.

(s) *Note.* A general attorney can make a special attorney or attorneys for his master by a bill in a court which bears record. I saw this in the same term, when a general attorney came into court before John of Benstede and made a special attorney for his master on five writs, notwithstanding that the chancery¹ was in the town of [Haltheburn]. I asked Richard of Haltheburn² [about this] and he said that this custom was common whether the chancellor was absent or present, in all the places of the justices etc.

(t) *Note.* Willoughby asked for a resummons.

BEREFORD, C.J. Where is the record?

Willoughby. Sir, it is in the treasury. Will you for the sake of charity send a bill to the chamberlains to cause the record to come before you so that we may have a resummons?

STANTON, J., to Willoughby. Will you do an injury to your client? Heretofore we have abated such a resummons which came here by such a process.

BEREFORD, C.J. Sue a writ out of the chancery to the treasurer and chamberlains, that they send us the record; and then you will have your resummons by due process.

(u) *Note.* I asked of several men, if the termor should after the expiration of the term take away the crop, which had grown on his land during the term. The majority said that he should not, for in that case he would be working on another's soil against covenant. *ShardeLOW* said that in equity he ought to have his crop etc.; but *Miggeley* said that he ought not, because agreement overrides equity. And so let every termor learn that he must have his term for such a period that he can have his crop without challenge.

¹ During the spring of 4 Edw. II. the king was in Scotland and it is not known where the chancery was held. As the words 'de Haltheburn' are cancelled in the French text the scribe may have blundered. It is of course possible that the chancery was at the place whence this Richard took his name during some part of this year. As

to this see the next note.

² It is possible that this is Richard of Aldborough, who was soon afterwards practising as a serjeant and who became a judge. He may also be the person who is frequently described in this MS. as 'Aldebir,' 'Alderb,' and by other similar names. See vol. iii. pp. xxii, xxiii.

59. CASES FROM FITZHERBERT'S ABRIDGEMENT.¹

(a)² Accompt de tempore quo fuit balliuus suus in manerio de R., et en count countaunt il ne demaunde l'accompt si non de vie bestes, sans pluis.

Heydon. Demaundoms judgement de variance enter le brieft et counte.

Et non obstante le brieft agardé bon.

Herle (ad idem) S'il fuit baillé de maner etc. et ad rendu accompt de toutes choses forspris les bestes, uncore il port son brieft come de l'entier, et en son count il demaunderent accompt de part.

Et son counte asses bon.²

(b)³ Replevin porté par A. vers W. que avowe par reson que il tient de C. certain *tenemenz* dount le lieu ou etc. est parcel a terme de sa vie par fealté et x *souz* par an, de quel fealté et rent C. fuit seisi par le mayn A. etc. le quel C. graunta le revercioun en fee ove les services al dit W. etc. par quel graunt A. attorna al W. et pur le rent etc.

Hyngham. Vous ditz que nous teygnoms de C. a terme de nostre vie et ce puit estre de son lesse, ou par le ley d'Engleterre ou autrement, et ceo ne aves mys en certain. Jugement de avowre.

Et non allocatur.

Hyngham. Nous tenoms jointment lez *tenemenz* ove nostre frere nient nosmé etc.

Scrop. Vous sole tenustz de C. a terme de vostre vie, et sole par son graunt a nous attornastz. Et veiz cy fait qe *testmoigne* son graunt. Jugement si encountre l'attornement et l'evydens que nous moustre deves par vostre vent ester resceu d'averrer le tenancy jointment.

Et le court accorde a son reson, par quei il dit que il ne attornement prist.

¹ The following notes of cases are attributed by Fitzherbert to the year 4 Edw. II., but for the most part they cannot be identified with any of the cases printed in this volume or in volume IV. The abridgement was written at a time when the French of our law courts was decidedly decadent; and it is often difficult to decide how its author intended his abbreviated words to be extended. For this reason letters which are omitted in the existing printed text or are there represented by marks of contraction are here printed in italics.

² Accompte, fo. 7v^o, case 113.

³ Avowre, fo. 120, case 203.

59. CASES FROM FITZHERBERT'S ABRIDGEMENT.

(a) Account 'de tempore quo fuit ballivus suus in manerio de R.' In counting his count the plaintiff demanded an account of six¹ beasts only without saying more.

Hedon. We ask judgment of the variance between the writ and the count.

Notwithstanding the variance, the writ was awarded good.

Herle (on the same side). If he were bailiff of the manor etc. and had rendered an account of everything save the beasts, he nevertheless would bring his writ of the entirety; and in his count he has demanded an account of part only.

And his count was awarded sufficiently good.

(b)² Replevin brought by A. against W. who avowed for the reason that he held of C. certain tenements, whereof the place in which etc. is parcel, for the term of his life by fealty and ten shillings a year; and of this fealty and rent C. was seised by the hand of A. etc. C. granted the reversion in fee with the services to the said W. etc. and on this grant A. attorned to W. and for the rent [he avowed] etc.

Hengham. You say that we held of C. for the term of our life, and this might be by his lease, or by the courtesy of England, or otherwise, and you have not put this in certainty. We ask judgment of your avowry.

The exception was not allowed.

Hengham. We hold the tenements jointly with our brother who is not named [in the writ] etc.

Scrope. You held solely of C., for the term of your life, and on his grant [to us] you attorned to us solely. See here the deed which witnesses his grant. We ask judgment if against the attornment and the evidence which we show to you, you ought by reason of your mere word to be received to aver the joint tenancy.

And the court agreed with *Hengham's* argument, whereupon the plaintiff said that the avowant did not take the attornment.

¹ The 'vie' of the printed text is no doubt an error for 'vj.'

² This may be the case of *Kembeare* v. *Kembeare* reported in vol. iv. at p. 153.

(c)¹ *Nota*, si home purchace tenementz que sont en debate pendaunt le plee, ceo n'est champarté s'il puisse averer que il ne les priste pas pour le ple maintenir etc.

(d)² En quare impedit le defendaunt vient al primer jour et conust al pleintif le presentement,³ et pour ceo que il vient al primer jour damages ne furent agardé etc.

(e)⁴ *Nota* que le baron puit deviser terre en fee ou a terme de vie a sa femme. Ajugé par la court etc.⁵

(f)⁶ Dette sur obligacioun. Le defendaunt dit que le pleintif luy manassa de batre sinon que il voile ceo faire. Par quei par force de ceo manasse il fist ceo obligacioun, et pur doute de greindre male qe luy puit avenir etc. Et ceo fuit ajugé bon ple etc. Et sic nota que il ne fuit pur doute de mort etc.

(g)⁷ *Nota*. En briefe d'entré en le post supposeant que le tenaunt n'ad entré sinon puis le lesse qe un tiel fist, est suffisaunt response a traverser le lesse sans dire de qe lesse ; par *Ber*.

Set non sic en le *per*, ou oportet dicere 'quod habet ingressum nisi⁸ per talem immo per talem etc.'

(h)⁹ *Nota*. En transgressio tout y sont xl defendaunts et sont essoné de services le roy et defaile¹⁰ de lour garraunt le pleintif ne recovers damages de le journé forsque auxi come vers un sole defendaunt etc.

(i)¹¹ *Dum fuit infra etatem*. *Denon*. Cesty que porte cest briefe dona¹² mesme les tenementz a B. vers que le briefe est porté pur auters tenementz en exchaunge des queux le demaundant fuit seisi jour de briefe pourchasé. Jugement.

W. Denon. Qe responses a nostre briefe que suppose que nous lessomus quaunt fusomus deins age ?

Hervy (justice). Il dit que vous aves auters tenementz en exchaunge, des queux vous fuistes seisi, par quei respondes a ceo.

W. Denon. Quaunt nous veignimes a nostre pleyne age nous n'agreames a ceo, ne fusomus seisi jour de briefe purchassé.

Et alii econtra etc.

¹ Champerty, fo. 198 v°, case 12. ² Damage, fo. 264, case 9. ³ This word is printed as 'pris.' ⁴ Devise, fo. 285 v°, case 23. ⁵ This point may have been raised in the case of *Abraham v. Abraham* reported in vol. iv. at p. 188. ⁶ Dures, fol. 315, case 19. ⁷ Entre, fol. 324 v°, case 65. ⁸ This appears to be an error for 'non.' ⁹ Essone, fol. 338 v°, case 79. ¹⁰ An error for 'defaillent.' ¹¹ Exchaunge, fol. 363, case 3. ¹² Printed as 'done.'

(c) *Note.* If a man purchase tenements which are the subject of litigation during the plea, it is not champerty, if he can aver that he did not take them in return for maintaining the plea.

(d) In a *quare impedit* the defendant came on the first day and acknowledged the presentation to the plaintiff; and because he came on the first day damages were not awarded etc.

(e) *Note.* A husband can devise land in fee or for a term of life to his wife. This was adjudged by the court.

(f) Debt on obligation. The defendant said that the plaintiff threatened to beat him unless he were willing [to make the bond]. Whereupon he made the bond by reason of this threat, and for fear of greater harm which might come to him etc. And this was adjudged a good plea etc. And notice that the defendant was not in fear of death.

(g) *Note.* In a writ of entry in the *post*, alleging that the tenant had not entry unless after the lease which such a person made, it is a sufficient answer to traverse the lease without saying of whose lease. This was the decision of BEREFORD, C.J.

But it is not so in the writ of entry in the *per*, and there it is necessary to say that 'he has not¹ entry by such a one, but he has by such a one etc.'

(h) *Note.* In a case of trespass, even though there be forty defendants and they are essoigned of the king's service, if they fail in warranting their essoigns, the plaintiff will not recover damages for the day except as against one defendant only etc.

(i) A writ of *dum fuit infra etatem*. *Denham.* He who brings this writ gave these same tenements to B. against whom the writ is brought in exchange for other tenements, and of these the demandant was seised on the day on which the writ was purchased. We ask judgment.

W. Denham. What do you answer to our writ which supposes that we leased when we were within age?

STANTON, J. He says that you had other tenements in exchange, and of these you were seised. Therefore answer to that.

W. Denham. When we came to our full age we did not agree to the exchange nor were we seised on the day when the writ was purchased.

And the others to the contrary.

¹ See note 8 opposite.

(k)¹ *Nota.* En brief de garraunte des chartres, si le pleintif soit seisie il ne recouera my damages tout eit le defendant counterpledé le garraunte, e garraunte soit dereigné vers luy. Mes en cas s'il perd les tenements pendaunt le ple de garraunte come en cas d'assise de novel disseisin il recouera damages.

(l)² Dette sur taille ensealé. Le defendaunt tendit de faire sa ley et ne fuit resceu, pur ceo que il aver (*sic*) seale pendant etc.

(m)³ *Nota.* Par *Berr.* que tenaunt a terme de vie avera brief de mesne vers le lessour cy bien come tenaunt en dowere etc. Quere hoc.

(n)⁴ *Quid iuris clamat* vers un que vient et clame a tener par la ley d'Engleterre del heritauns cestuy que leve le note; e le note voile a terme de vie del lessé etc. Et pur le varians fuit agardé que le tenaunt ala a dieu e que l'auter suer tout de novel etc.

¹ Garraunt de Chartres, fol. 34, case 28.

² Ley, fol. 93, case 68.

³ Mesne, fol. 106 (107), case 51.

⁴ Variaunce, fol. 169 v°, case 107.

(k) *Note.* In a writ of warranty of charters, if the plaintiff be seised he will not recover damages, although the defendant has counterpleaded the warranty, and the warranty be deraigned against him. But in a case in which the vouchee loses the tenements during the plea of warranty, as in the case of an assize of novel disseisin, the tenant will recover damages.

(l) Debt upon a sealed tally. The defendant offered to make his law, and he was not admitted to do so, because there was a seal pendent to the tally etc.

(m) *Note.* BEREFORD, C.J., held that a tenant for a term of life will have a writ of mesne against the lessor, just as much as a tenant in dower has a writ etc. But query this.

(n) *Quid iuris clamat* was brought against a man who came and claimed to hold by the courtesy of England of the inheritance of him who levied the note. And the note said for the term of the life of the lessee etc. And on account of the variance it was awarded that the tenant go adieu and that the other party sue afresh etc.

PLACITA DE TERMINO PASCHE ANNO REGNI REGIS
EDWARDI FILII REGIS EDWARDI QUARTO.

1. BOX v. PALMER.

I.¹

Monstravit, ou l'averement de noun resceite fut resceu pur le defendaunt.

Un Adam porta le *monstravit de compoto* vers B. etc. B.² tendit d'averer q'il avoit terre etc. par quei etc.³ Jugement du bref. Adam⁴ le revers; ou⁵ trové fuist q'il ne out terre etc. par quei etc. mes trové fuist q'il avoit un mees du droit sa femme qe valust vj souz par an, le quel mees n'est pas frauntenement a lui⁶ ne par cel n'est yl mye justisable, pur ceo q'il n'y⁷ avoit pas issue entre lui et sa femme, par quei le bref estut. Mes s'il eust ew⁸ issue issint qe s'il⁹ eust eu francnement il eust esté justisable,¹⁰ le bref eust esté abatable¹¹ Et le pleintif fist¹² autrefois sa demoustraunce et sa demaunde vers lui, q'il lui rendist¹³ acompte de C. livres et de x livres.

*Ass.*¹⁴ conust q'il resceut C. livres et de ceo fuist prest d'acounter; en droit de x livres il dit q'il ne resceut point etc.

Herle lui voilleit avoir chargié dil entier sour l'acompte devaunt les auditours, qaunt il duissent¹⁵ prendre soun acompte.

*Ber.*¹⁶ Nous ne les chargeroms¹⁷ de plus qe de ceo dont il est conissaunt.¹⁸

Herle. Il fuist nostre resceivour de tant come nous avoms dit, et prioms auditours.

*Ass.*¹⁹ Nous voloms averer *ut supra*.

¹ From B collated with G, M, P, R. ² *Ins.* vynt et, M, P. ³ *Ins.* e demaunda, P. ⁴ L'autre, M, P. ⁵ *Om.* ou, M, P. ⁶ *For* le quel . . . a lui, *subs.* mes il n'avoit pas frauntenement en cel mees, P, *Sim.* M. ⁷ ne, G, M, P, R. ⁸ *Om.* ew, G, R. ⁹ il, M, P. ¹⁰ *Ins.* et, R. ¹¹ abatu, M, P. ¹² eust fet, M, P. ¹³ rendisit, G, R. ¹⁴ *Pass.* R. ¹⁵ deveynt, G, R. ¹⁶ Denom. M, P. ¹⁷ chalengoms, M, P. ¹⁸ conu, P, cove, M. ¹⁹ *Pass.* R.

PLEAS OF EASTER TERM IN THE FOURTH YEAR
OF KING EDWARD II. (A.D. 1311).

1. BOX *v.* PALMER.¹

I.

Monstravit. A case in which an averment of non-receipt was admitted on behalf of the defendant.

One Adam brought the *monstravit de compoto* against B. etc., who offered to aver that he had land etc. whereby he might be distrained. He asked judgment of the writ. Adam offered to aver the reverse. [Issue was joined], and it was found that B. had not land whereby he might be distrained, but that he had a messuage in right of his wife, which was worth six shillings a year. This messuage was not franktenement, nor was B. justiciable by it, for there had been no issue between him and his wife. Therefore the writ stood. If there had been issue, so that he had had franktenement, he would have been justiciable and the writ could have been abated. The plaintiff again made his demonstrance and his demand against him that he should render an account to him of one hundred and ten pounds.

*Assheley*² acknowledged that the defendant had received [seventy-seven] pounds, and [said that he] was ready to account for that sum. As to [thirty-three] pounds he said that defendant had not received them.

Herle wished to charge him with the entirety upon the account before the auditors when it fell to them to take it.

BEREFORD, C.J. We will not charge him with more than the sum which he acknowledges.

Herle. He was our receiver of as much as we have said, and we pray for auditors.

Assheley. We will aver *as above stated*.

¹ This is Fitz. *Briefe*, folio 184v°, case 790. It appears in the Old Edition on p. 99. A report of this case in its earlier stage will be found in vol. iii. at p. 91.

² In one MS. *Passeley* not *Assheley* appeared for the defendant.

Hervi. Nous ne prendrons pas enqueste de resceite le quel ceo fuit plus ou meinz, q'il ne chiet pas en conissaunce de pais,¹ einz en especiauté, *scil.* en dividende² ou en autre especiauté,³ dount si vous sietz nul especiauté le mettet avaunt sour acompte par le quel vous vous puisset deschargier.⁴

Ber. Graunt duresse serroit s'il⁵ fuist chargié de plus q'il ne resceut.

Et au dreyn l'averement fuist agardé par *Ber.* etc.⁶ qaunt il estoit avisee etc.

II.⁷

Monstravit ou fut trové par enqueste qe le defendant n'avoit qe vj soudeez de terre ou lem demaunda acounte de C. ix livres. Et le bref estut e plederent apres sur la resceite *non obstante* q'il furent a issue q'il out terres par queux il pout estre destreint a aconte rendre. Et sic nota qe tout ne put homme estre a issue sur la suffisauncie, noun pas pur ceo il prendra avantage si ceo seit trové par verdit d'enqueste.

Un home porta soun *monstravit de compoto*, e conta qe⁸ par la ou il fut soun resceivour de C. ix livres etc.

Ingh. Cesti bref est doné par statut vers celui qi n'ad terres ne tenemenz par ount⁹ il pount estre destreint,¹⁰ mes voloms averer qe nous avoms etc. Jugement du bref.

Herle. Cesti bref est doné¹¹ vers cely qe ne put estre justicé par terres, dont si vous nous voletz ouster de cesti bref pur ceo qe vous poetz estre justicé par vos terres¹² il covent qe vous ditez qe vous avetz terres e tenementz suffisantz quant¹³ al acounte rendre qe nous demaundoms.

Ingham. Grantez donqe qe nous avoms terres.

Herle ne voleit, mes voleit al¹⁴ averement sur la suffisauncie chacer.¹⁵

Et ne fu pas a ceo resceu par *Ber.* qui dicit: Auxi com statut doigne le bref vers ceux¹⁶ etc. par queux etc. auxi covent il qe vous traversez etc. q'il¹⁷ ad terres etc. par queux etc.

Et sic fecit.

¹ *Ins.* ceo q'il resceut, *M, P.* ² *sic, G, R.* demid', *B.* ³ *Om. scil.* en . . . especiauté, *M, P.* ⁴ *For* vous puisset deschargier, *subs.* le pussez charger, *M, P.* ⁵ q'il, *R.* ⁶ *For* l'averement . . . etc. *subs.* Horneby agarda l'averement, *P, Sim, M.* ⁷ From *D* collated with *C, Q* and *T.* ⁸ *Om.* qe, *Q, T.* ⁹ quei, *C,* aount, *Q.* ¹⁰ amené en court, *C, Q.* ¹¹ *Ins.* par statut, *C, Q.* ¹² *Ins.* a nous rendre acounte, *C, Q.* ¹³ *Om.* quant, *C, Q.* ¹⁴ auer, *C, Q.* ¹⁵ *Om.* chacer, *C, Q.* ¹⁶ *Ins.* qi n'ount terres ne, *T, C, Q.* ¹⁷ s'il, *C, Q.*

STANTON, J. We will not take an enquest on whether the receipt was more or less, for that does not lie within the cognisance of the country, but is a matter of specialty, to wit, indenture¹ or otherwise. Therefore if you have any special matter by which you can [charge] him, put it forward on the account.

BEREFORD, C.J. It would be a great hardship if he were charged with more than he had received.

In the end the averment was awarded by BEREFORD when he had considered the matter.

II.

A case of *Monstravit* in which it was found by enquest that the defendant had only six shillings a year of land,² whereas an account for one hundred and [ten] pounds was demanded. The writ stood and they pleaded afterwards about the receipt, notwithstanding that they had been at issue whether he had lands whereby he could be distrained to render an account. And note that although a man be at issue on the sufficiency, he will take no advantage therefrom, if sufficiency be found by the verdict of the enquest.

A man brought his *monstravit de compoto* and counted that whereas the defendant was his receiver of one hundred and [ten] pounds etc.

Hengham. This writ is given by statute³ against him who has not lands or tenements by which he can be distrained. We wish to aver that we have such land etc. We ask judgment of the writ.

Herle. This writ is given against him who cannot be justiced by his lands, wherefore, if you wish to oust us from this writ on the ground that you can be justiced by your lands, you must say that you have lands and tenements sufficient as regards rendering the account, which we demand.

Hengham. Then you grant that we have lands.

Herle would not grant this, but wished to drive him to the averment upon the sufficiency.

He was not admitted to this by BEREFORD C.J. who said:—As the statute gives the writ against those who have not lands etc. by which etc. you must traverse etc. that he has lands etc. by which etc.

This *Herle* did.

¹ This seems to be the meaning of 'dividende.'

² This is incorrect. The record shows that he had a messuage worth

six shillings a year in right of his wife only.

³ Provisions of Marlborough, 52 Hen. III. cap. xxiii.

L'enqueste se joint qe vynt e dit qe le defendant n'avoit qe un mes qe ne valoit qe vj souz par an et le quel mes si fut del heritage la femme le defendant.¹

Herle. Nous prioms auditours.

Ingh. La ou vous avetz conté qe nous esteimes vostre resceivour² de C ix livres, nous vous dioms qe nous n'esteioms resceivour fors de lx livres, et de ceo sumes prest d'aconter, e prest etc. si etc.³

Herle. Deschargez vous sur l'acounte.⁴ Jugement si a tiel averrement devez avenir,⁵ qe ceo serreit a doner proces infinite.⁶

Ber. Nous n'agardoms pas l'aconte fors⁷ de ceo q'il ad esté resceivour, par quei il vous covent estre a un de la resceite,⁸ qe autrement ensuwerreit qe vous lui chargeretz de chose dont il n'avoit unques administracion. Et pur ceo grantez ceo q'il ad dit⁹ ou resevetz¹⁰ l'averrement etc.

Note from the Record.

De Banco Rolls, Easter, 3 Edw. II. (No. 181), r. 35d, York.

Henry le Palmere was attached by his body etc. to answer John Box on a plea that he render to him his lawful account of the time when he was receiver of the pence of John etc. And whereupon John Box by his attorney says that, whereas Henry was receiver of the moneys of John at Kyngeston upon Hull and received by parcels of the money of John from [18 December 1306] the Sunday next before Christmas 35 Edw. I. till [25 January 1307] the feast of the Conversion of St. Paul 3 Edw. II. one hundred and ten pounds for trading (*ad merchandisandum*) Henry has heretofore refused to render his account to him thereof for the period aforesaid and still refuses. Whereupon he says that he is injured and has damage to the value of one hundred pounds, and thereof he brings suit etc.

And Henry comes and defends tort and force when etc. and he says that he ought not to answer him on this writ, for he says that by such a writ of *monstravit* help is given to those demanding an account etc. in a case where the receivers or bailiffs have not lands or tenements by which they can be distrained to render such an account. And he says that he has lands and tenements at the town of Pontefract and elsewhere in the county of York, and that he had them on the day of the purchase of the writ, to wit 2 February 3 Ed. II. whereby [he could be distrained] etc. And of this he puts himself upon the country.

Issue is joined and a *uenire facias* awarded here for the octave of Michaelmas. And upon this Henry found manucaptors, to wit (*six named*

¹ *Om.* le defendaunt, *C*, *Q*. ² *Om.* qe nous . . . resceivour, *C*. ³ *Om.* e prest . . . etc. *C*. ⁴ *Om.* Deschargez . . . l'acounte, *C*. ⁵ estre resceu, *C*, *Q*.
⁶ issint, *D*, et infinitum, *T*. *For* qe . . . infinite, *subs.* car deschargez sur
l'account qe ceo serreit a doner proces infinite, *C*. ⁷ si noun, *C*, *Q*. ⁸ *Om.*
par quei . . . resceite, *C*, *Q*. ⁹ *Om.* ceo q'il ad dit, *C*, *Q*. ¹⁰ refusez, *C*, *Q*.

The enquest was joined, and it came and said that the defendant had one messuage only, which was worth six shillings a year only, and that this messuage was of the inheritance of the defendant's wife.

Herle. We pray for auditors.

Hengham. Whereas you have counted that we were your receiver of one hundred and [ten] pounds, we tell you that we were your receiver of [seventy-seven] pounds only, and of that we are ready to account.

Herle. Then discharge yourselves on the account. We ask judgment if you ought to come to such an averment, for it would be giving an infinite process.

BEREFORD, C.J. We award the account of that only of which he has been the receiver. Therefore you must be at one about the receipt, for otherwise it would follow that you would charge him with that of which he has never had administration. Therefore grant what he has said or receive the averment etc.

Note from the Record (*continued*).

persons) who undertook to have his body here at the aforesaid term, and every day of the plea, while the jury was pending, until etc. to wit, body for body.

Afterwards process being continued until the quindene of Easter 4 Ed. II. came John Box by his attorney and Henry in his own person and Lambert of Trikingham before whom etc. sent the record of the verdict of the jury in these words etc.

Afterwards at York on the [31 March 1311] Wednesday next before Palm Sunday 4 Edw. II. before Lambert of Trikingham with Robert of Bouyngton knight associated to him came John Box by his attorney and likewise Henry in his own person and the jury chosen by consent of the parties, who say upon their oath that Henry has and had on the day of the purchase of the writ etc. one messuage in the town of Pontefract, as of the right of one Alice his wife, which is worth six shillings a year, and that Henry has not any other tenement in that county nor elsewhere to their knowledge etc. The parties are told to await their day in the bench for hearing their judgment.

Afterwards Henry forthwith (*instantly*) acknowledged that he received of the moneys of John during the period aforesaid seventy-seven pounds and therefor is ready to account etc. Therefore auditors are assigned for them, to wit, Robert of Hannell and Neal Drury and Stephen of Preston etc. and Henry is committed to the Flete prison in custody etc.

Afterwards for hearing the account etc. the auditors record before the justices here in the presence of the parties that when what had to be reckoned had been reckoned, and what had to be allowed had been allowed etc. Henry remains in arrears in thirty-three pounds eighteen shillings and ten pence halfpenny. Therefore he is recommitted to Flete gaol until etc.

2. ANON.¹

Monstravit de compoto, ou il ne fut pas resceu de prier congé de quere mellour bref.

En un *monstravit de compoto* il counta q'il fut son resceivour de ses deners en Douston en le counté de Norff'; e le bref ala al vicounte de Suthf'. Le defendaunt demaunda jugement de bref. Et pout² l'en³ aver demaundé jugement de la variaunce, et cest excepcioun chiet indifferement al un et l'autre. Et pus le pleintif pria congé de quere meliour bref.

Stanton. Le defendaunt est pris, si vous eussez congé de quere meillour bref il covendra q'il fut detenu en prisone et⁴ la qe vous eussez bref a pleder; et ceo ne poez⁵ mye fere ne ne voloms nent.

Et pus le bref abatit etc.

2. ANON.⁶

Amesurement de pasture.

Un A. porta bref vers B. Plederent a l'enqueste, qe fut prise par le vicounte qe retorna qe chescun de sa terre pout trover de animaille, e qe B. avoit meynz suffisaunte commune apurtenaunt etc. et pur la surcharge etc.

Hengham. Si agarde ceste court qe A. recovere sa suffisaunte pasture, e B. en la mercy, e A. recovere nules damages, kar tut soit ceo issint q'il counte par mi damages quant a la forme du counte, ne pur quant le pleeprent naturelement issue en le dreit pur touz jours. Ensement il avent sovent qe homme ne counte mie par my damages, e si recovere il damages auxi cum en bref de ael, cosinage, par statut de Gloucestre.

¹ From *M* collated with *P*. ² *Ins.* dount, *P*. ³ *Om.* len, *P*.
⁴ ci, *P*. ⁵ pooums, *P*. ⁶ From *P* (fo. 63 r^o).

2. ANON.¹

A case of *monstravit de compoto* in which the plaintiff was not admitted to ask leave to seek a better writ.

In a *monstravit de compoto* the plaintiff counted that the defendant was his receiver of his money in Douston in the county of Norfolk. The writ went to the sheriff of Suffolk. The defendant asked judgment of the writ. (He could have asked judgment of the variance between the writ and the count. The exception may be made to one or other of these indifferently.) Then the plaintiff prayed leave to seek a better writ.

STANTON, J. The defendant is in custody. If you had leave to seek a better writ it would be necessary for him to be detained in prison, until you had a writ to plead upon. We cannot and we will not do that.

Then the writ abated.

3. ANON.²

Admeasurement of pasture.

One A. brought a writ against B. They pleaded to the enquest, which was taken by the sheriff who returned that each tenant could find [so many] beasts [for the common], and that [A.] had less than sufficient common appurtenant to his land etc., and through the surcharge etc.

HENGHAM, C.J. So this court awards that A. recover sufficient pasture and that B. be in mercy; and that A. recover no damages, for although it may be that he counts by damages as regards the form of his count, nevertheless the plea always has its issue naturally in the right. Likewise it often happens that a man does not count by way of damages and yet recovers damages as in the case of writs of ael, and writs of cosinage and by the statute of Gloucester.³

¹ The record of this case has not been found, but it is not improbable that the report is a misplaced one of *Ryvere v. Freere* heard in Easter term 3 Edw. II. (see vol. iii. p. 126). The name Douston might easily have been written in error for Boston, and the fact that Norfolk and Suffolk are mentioned instead of Lincoln and Cambridge is no objection to the identification. The case of *Duraunt*

v. atte Stone also heard in that term raised the same point (*De Banco Rolls*, No. 181, r. 30).

² This case (which occurs in one MS. only) is evidently misplaced, as HENGHAM, C.J., died in the first year of the reign.

³ This reference seems to be to cap. i. of the Statute of Gloucester (6 Edw. I.).

4. STRODE *v.* PRIOR OF LODRES.I.¹

En un bref de champartie fut porté as Justices de commune banke, hors de quel original issit bref de jugement à vicounte de Devon a fere venir la partie, qe vint en court. Et fut counté vers ly coment il aveit resceu terre en champartie en le counté de Devon dont il fut seisi.

Migg. Jugement de cesti bref qe va a vicounte de Devon, et les terres dont il parle sunt en un autre counté.

Staunton. La court est assez de power de fere venir gentz de une counté et de autre; et ceo est un bref de jugement qe ne put estre abatue si legerement etc. com le original. Et d'autrepart ceo est un bref de trespas ou le bref irra au vicounte, ou il purrount meutz estre asserté justice.

Et hoc non obstante le bref de jugement se abati, et dit lui fut q'il suyt autre bref au vicounte.

II.²

Un bref de champartie³ fut porté vers un homme e counté fut vers ly q'il avoit purchacé la terre le plee pendant etc.

Migg. Il ad porté soun bref a vicounte de B. e la terre est en le countee de N. Jugement du bref.

Lanf. C'est un bref de deceit ou la partie deit estre ataché, dount il covent porter le bref la ou le defendant serra trové.

Ber. Ne covient il pas d'enquere etc. par pais ou le feffement dut avoir esté fet?

E le bref s'abati.

Ber. Nous abatoms ceti bref en cele forme, qe vous eyez autel bref hors des roules a vicounte ou la terre est.

Et sic factum fuit.

¹ From *M* (fo. 39 r°).

² From *P*.

³ MS. 'champarto.

4. STRODE *v.* PRIOR OF LODRES.I.¹

A writ of champerty was brought to the justices of the common bench, and from this original there issued a judicial writ to the sheriff² of [Dorset] to make the defendant come. He came into court and it was counted against him that he had received lands in champerty in the county of Devon and was seised thereof.

Miggeley. Judgment of this writ, which goes to the sheriff of [Dorset], whereas the lands of which it speaks are in another county.

STANTON, J. The court has sufficient power to make men come from the one county or the other; and this is a judicial writ which cannot be so easily abated, as the original. Besides this is a writ of trespass, and the writ goes to the sheriff of the county where justice can best be asserted.

Notwithstanding this, the judicial writ was abated and the plaintiff was told to sue a writ to another sheriff.

II.

A writ of champerty was brought against a man and it was counted against him that he had purchased the land while the plea was pending.

Miggeley. He has brought his writ to the sheriff of [Dorset] and the land is in the county of Devon. We ask judgment of the writ.

Laufare. This is a writ of deceit on which the party must be attached. Therefore the writ must be brought where the defendant can be found.

BEREFORD, C.J. Is it not necessary to make the enquiry etc. by a jury, from the place where the feoffment is said to have been made?

The writ was abated.

BEREFORD, C.J. We abate this writ in this way. You may have a like writ issuing out of the rolls to the sheriff of the county where the land is situate.

This was done.

¹ The proper names are corrected by the record.

² The original writ of champerty was always addressed to the justices of

the common bench, who thereupon issued a judicial writ ordering the defendant to be attached.

III.¹

Champartie ou le bref de jugement fut abātu et le original estut.

Un homme suyt bref a les justices de bank de champartie vers un priour. Pus issit un bref de jugement a fere le priour venir devant eux a respoudre de cele deceyte a la suyte le pleintif. Le priour vint. Le pleintif counta vers lui qe par faux alliaunce et mayntement le priour avoit pris taunt de terre a champartie. Le priour dit qe le bref de jugement ala a vicount de Dorset et demaunda jugement de bref, pur ceo qe le original va a vicounte de Somerset. Le bref de jugement fut abatu et le bref estut.

Et coment comaundé il fut q'il suyt autre bref a viconte de Somerset? Sire la cause put estre qe la defaute ne demurra mye en la partie, einz fet en la court, et lour defaute demene il pout redresser en meynte cas.

IV.²

Nota par la ou A. porta soun bref de champartie par forme de statut a *W. Ber.* e ses compaygnons justices du baunke q'il feysent dreyture solom ley de terre de un B. de C. par la ou A. demande vers C. un mees e deux carué de terre vers G. par un bref de ael en le counte de Cant', pendant qel plee le dit B. purchacea del dit C une carué de terre pur maintenir ceu ple encountre forme d'estatut ut dicit Le bref fut en roulé, et A. suit un bref hors des roules a vicounte de Virrecestre de attacher le dit W. q'il fut issi a respoudre de la chaumpartye.

A quel jour B. vint e defendi tort e force e dit a cestui bref ne deit il estre respandu, qar les tenementz qe sont en demande, qe duissent estre trié de la champertie, sont en le conté de Devenes', e les attachementz par quei nous sumes venuz en ceste court cy est venu

¹ A second report from *M* (fo. 37 r°).

² From *Y* (fo. 218 r°).

III.

A case of champerty where the judicial writ was abated, and the original writ stood.

A man sued a writ of champerty to the justices of the bench against a prior. Then a judicial writ issued to make the prior come before them to answer for the deceit at the suit of the plaintiff. The prior came. The plaintiff counted against him that by false alliance and maintenance the prior had taken so much land by way of champerty. The prior said that the judicial writ went to the sheriff of [Dorset], and asked judgment of the writ, because the original writ¹ [by which the tenements were demanded] went to the sheriff of [Devon]. The judicial writ was abated, and the original writ [of champerty] stood.

And why was it ordered that he sue another [judicial] writ to the sheriff of [Devon]? Sir, the reason of this may be, that the mistake did not lie with the party, but was made in court, and the court can redress its own mistake in many cases.²

IV.

Note. A. brought his writ of champerty by the form of the statute³ to William of Bereford and his fellow justices of the bench that they should do right according to the law of the land with respect to one B. of C. where A. demands against C. a messuage and two carucates of land⁴ by a writ of ael in the county of [Devon], during which plea the said B. purchased from the said C. a carucate of land to maintain that plea against the form of the statute, as he says. The writ was enrolled and A. sued a writ out of the rolls to the sheriff of [Dorset] to attach the said [B.] that he should be here to answer for the champerty.

At the day given B. came and defended tort and force and said that on this writ the plaintiff ought not to be answered, for the tenements which are in demand, the champerty whereof is to be tried, are in the county of Devon, and the [writ of] attachment by which we have come into this court, went to the sheriff of [Dorset]. We ask

¹ It seems from the context that the reporter is here referring to the writ by which the lands were demanded.

² This rhetorical question and answer is an unusual ending to the report, but it seems impossible to read the words 'coment,' and 'Sire' of the

French text otherwise. The *en* of the former word and the *e* of the latter are represented by marks of contraction.

³ Articuli super cartas, 28 Edw. I. c. ii.

⁴ The words 'vers G' seem to have been inserted in the French text in error.

a vicounte de Vircestre. Jugement etc. qar si l'enqueste sey joinsit il passereit par gentz du veine ou la demande est. Jugement etc.

Malm. Ceo est un personel trespas; et ou la partie put plus tot estre trové plus tost de son trespas respondra, par quei etc.

Hoc non obstante *Ber.* agarda le bref mavez, et dit 'suez autre bref hors des roules a vicounte de Devenes' si vous voil.'

Note from the Record.

De Banco Rolls, Easter, 4 Edw. II. (No. 185), r. 61, Dorset.

The prior of Lodres was attached to answer as well the king as Nicholas of Strode of a plea why among other articles which King Edward I. granted for the amendment of the state of his people it is ordained that no minister of his nor any other in return for having a part of the thing in plea shall take upon himself to maintain and defend the matters which are in such plea nor shall upon such covenant demise his right to another, and the prior of Lodres has now taken upon himself to maintain a plea which is before the justices here between Nicholas of Strode demandant and Agnes the widow of Richard of Benedon tenant of one messuage one carucate and a half of land twelve acres of meadow and sixty acres of pasture

5. KELLESTEKMUR v. LANBRUNMUR.

I.¹

De contribucione inter participes ad sectam faciendam ou il furent a issu sur ceo qe Johan de Lamb' e ses auncestres tendrent devaunt le temps le roy Henri e apres deschargez de sute sanz contribucion Et l'ancestre de Johan de L. ael Johan vers qi etc. fit la contribucion a R. etc. piere Johan le demaundaunt, prest etc.

Johan de Kellesmere porta soun bref de contribucion vers Johan le fiutz Johan Lamb', et demaunda contribucioun² a la sute³ faire a la courte Henri de Pomery en Treiguny, e conta etc. qe un Richard de Kellesmere fu seisi etc. de v acres de terre⁴ en les villes nomez el bref etc. les queux sont descenduz a les avanditz Johan et Johan parceners de mesme le heritage etc. et la quele sute⁵ l'avandit Johan de K fait pur lui et l'avandit Johan le fiutz Johan de Lamb' a la courte avandite etc.

¹ From *D* collated with *B*, *C*, *G*, *R*, *T*, and *Y*. ² *Ins.* seulement *T*.
Om. vers . . . contribucioun, *Q*. ³ *Om.* a la sute, *B*, *G*, *R*. ⁴ *Ins.*
corwaleches, *Y*. ⁵ services, *C*.

judgment etc., for if the enquest were joined, it should pass by men of the visne in which the land demanded lies.

Malberthorpe. This is a personal trespass, and there where the party can be soonest found there will he answer soonest for his trespass. Therefore etc.

Notwithstanding this BEREฟอร์ด, C.J., awarded that the writ was bad and said, Sue another writ out of the rolls to the sheriff of Devon if you will.

Note from the Record (*continued*).

in Axemuth in return for having a share of the same messuage land meadow and pasture to the no small damage and grievance of Nicholas and in manifest retardation (*prorogacionem*) of his right and against the form of the ordinance etc.

And the prior comes and defends force etc. and says that he ought not to answer him thereof on this writ, because he says that the vill of Axemuth, in which the tenements lie, is in the county of Devon; and this writ is directed to the sheriff of Dorset, whereupon he asks judgment.

And Nicholas cannot deny this. Therefore let the prior at present go hereof without day etc. and let Nicholas purchase for himself another writ if it seem expedient to him etc.

5. KELLESTEKMUR v. LANBRUNMUR.

I.¹

A case of contribution between parceners towards doing suit, in which they were at issue upon the question whether John of Lanbrunmur and his ancestors held before the time of King Henry and afterwards discharged of suit without contribution. And the demandant was ready to aver that the ancestor of John of Lanbrunmur the grandfather of John against whom etc. made the contribution to R. etc. the father of John the [said] demandant.

John of Kellestekmur brought his writ of contribution against John the son of John of Lanbrunmur and demanded contribution towards doing suit to the court of Henry de Pomeray in Tregony, and counted that one Richard of Kellestekmur was seised of five acres of land in the vills named in the writ etc. which descended to the aforesaid John and John as parceners of the same inheritance etc. which suit the aforesaid John of Kellestekmur does for himself and for the aforesaid John the son of John of Lanbrunmur at the court aforesaid etc.

¹ This is Fitz. *Age* folio 24 v^o, case 138. The proper names are corrected by the record. It appears in the Old Edition on p. 101.

Ingh. defendi¹ tort e force e quanq' est acontre la² purveance etc. et³ vous avetz conté qe un Richard de K. fu seisi etc. et sount⁴ descenduz a Johan e Johan com parceners, faites nous⁵ parceners.

Migg. Richard de K.⁶ avoit ij filles *videlicet*, Sarre e Sabyne De Sarre vynt Richard de K., e de R. Johan qe porte ore cesti bref. Et de Sabine vynt Johan e de Johan vynt Johan vers qi cesti bref est ore porté.

Ingh. Sire, nous vous dioms qe Johan de Lamb' nostre piere si⁷ tent etc. sanz contribucion faire, e murust de tiel estat.⁸ Et nous sumes denz age e devoms continuer l'estat nostre piere qi heir etc. Et prioms nostre age.

Migg. Vostre age ne devetz avoir, qar⁹ de meliour condicioun ne devetz estre¹⁰ vers nous qe vous ne serrez¹¹ vers le chief seignur. Mes¹² si le chief seignur vous demaundast cele sute a quele nous demaundoms la contribucion¹³ vostre noun age ne targereit¹⁴ qe vous ne respoignez¹⁵ et per consequens hic.¹⁶ Estre ceo la seute qe nous fessoms etc. si est auxi bien pur vostre purpartie del heritage qe fut a¹⁷ Richard le comune auncestre¹⁸ com pur la nostre etc. Jugement.

Ingh. Ceo est un bref de dreit en son cas, issi qe si nous seoms chargez quant a¹⁹ ore nous serroms²⁰ chargez a toutz jours. Et n'entendoms my qe a la chose qe lie si haut en le dreit devoms en nostre noun age estre chacez a²¹ respoudre.

*Hervi.*²² Dites outre etc.

Ingh. Il²³ demaunde contribucion a une sute faire etc. e ne mettez²⁴ my la contribucion en certeyn.²⁵

*Ber.*²⁶ Put estre q'il despent²⁷ ascun foitz plus e ascun foiz meyns a la sute faire etc. issi qe chose ne put estre mys en certeyn.

Ingh. Sire, nous vous dioms qe²⁸ Richard de Kell' le commune auncestre²⁹ fu seisi de les tenemenz qe achaierent³⁰ a nostre purpartie e auxi de la purpartie Johan q'ore porte ceo bref en temps le roi Johan,

¹ defent, B, Q, T. ² *Ins.* commune, C, Q. ³ *Ins.* par la ou, B, G, R.
⁴ *Om.* et sount, T; *subs.* les queux sount, B, G, R. ⁵ les, Y, vous, B, G, R, voz, T. ⁶ *Om.* fu seisi . . . de K., Q. ⁷ qi, T. *Om.* si, B, C, G, Q, R. ⁸ *Ins.* seisi, C, Q. ⁹ *Om.* vostre . . . qar, C, Q. ¹⁰ *For* devetz estre, *subs.* serretz, B, serret, G, serreit, R. ¹¹ *Om.* vous ne serrez, B, G, R. ¹² *Om.* mes, C, Q.
¹³ *Ins.* par, C, Q. ¹⁴ *Ins.* rien, B, nent, G, R, mie, Y, freiez la sute, Y. ¹⁵ *For* ne targereit . . . respoignez *subs.* le plee ne targereit mie, C, Q. ¹⁶ *For* et . . . hic, *subs.* ergo nec hic, C, Q, auxint yci, B, ensi icy, G, R, dischargereit, T, per consequens nec hic, Y. ¹⁷ *Om.* qe fut a, B, G, R, Y. ¹⁸ *Om.* del heritage . . . auncestre, C, Q. ¹⁹ *Om.* quant a, B, G, R. ²⁰ demorroms, B, G, per consequens hic, T, demurioms, R, Y, devendroms, C, Q. ²¹ *Om.* estre chacez a, C, Q. ²² Speech omitted, C, Q. *Ins.* a Hengham, Y.
²³ *sic*, C, B, G, Q, T, R, Y. *Om.* Il, D. ²⁴ mette, B, C, Q, met, G, R. ²⁵ *Ins.* Jugement, B, G, Q, R. ²⁶ Speech omitted, C. ²⁷ *sic*, B, G, Q, R, T, qe y depent, D. ²⁸ *Om.* Sire . . . qe, B, G, R. ²⁹ *Ins.* si, B, C, G, R. ³⁰ escheirent, B, C, G, Q, R.

Hengham defended tort and force and whatever is against the provision etc. [And said:—whereas] you have counted that one Richard of Kellestekmur was seised of the tenements etc. which descended to John and John as parceners, make [them] parceners.

Miggeley. Richard of Kellestekmur had two daughters [Melior] and Sabine. From [Melior] came Richard of Kellestekmur; and from Richard came John, who brings this writ. From Sabine came John, from John came [another John, and from that John came a third] John, against whom the writ is now brought.

Hengham. Sir, we tell you that John of Lanbrunmur our father held etc. without contributing and died seised of that estate. We are within age, and ought to continue the estate of our father whose heir etc. We pray our age.

Miggeley. Your age you ought not to have, for you should not be in better condition against us than you would be against the chief lord. But if the chief lord demanded from you that suit, for which we demand contribution, your nonage would not delay you from answering, and so it should be in this case. Moreover the suit which we do etc. is as well for your share of the inheritance of Richard our common ancestor as for ours. We ask judgment.

Hengham. This is a writ of right in his case, so that if we were charged now, we should be charged always. We do not think that we ought in our nonage to be driven to answer to matter which lies so high in the right.

STANTON, J. Answer further.

Hengham. He asks contribution towards doing a suit etc. and he does not make the contribution a certain one.

BEREFORD, C.J. It may be that he spends sometimes more and sometimes less in doing the suit, so that the contribution cannot be stated with certainty.

Hengham. Sir, we tell you that Richard of Kellestekmur the common ancestor was seised in the time of King John of the tenements which fall to our share, and also of those which fall to the share of John who now brings this writ; and after the death of the

apres q'i mort entrerent ¹ Sarre e Sabyne com filles etc. entre queux la purpartie ² faite en temps de mesme le roi issi qe Johan le fuitz Johan de L.³ e ses aunecestres pus le temps avantdit ount tenu la purpartie etc. sanz nule ⁴ contribucion faire. Et demaundoms jugement si par cesti bref fondu sur statute de Marleberge q'est de plus tardif temps doné *uidelicet* du temps le roi H. de contribucion nous puisset charger.

Migg. Sire, l'estatut ne fu pas fait en defessance de commune lei, einz en amendement etc. e entendoms ⁵ qe ceo remedie eufre ⁶ auxi bien de tenemenz descenduz avant l'estatute de Marleberge com de tenemenz descenduz pus. Et del hure q'il ne put dedire q'il n'est nostre parcener etc. e la sute n'est due del heritage entiere, jugement si par tant se puisse de ceste contribucion ⁷ desafubler.⁸

Ber. Ceo remedie si est doné par statut etc. fait en temps le roi H. ou nul n'i ⁹ fut avant, e vous dit qe en le temps le roi Johan ses aunecestres tyndrent lour purpartie deschargé de ¹⁰ contribucion, en quel temps nul remedie par cesti bref ne fut; e cel estat deschargé lui e ses aunecestres ount continué tanqe a ore,¹¹ par quei einz ceo qe vous lui puissetz charger etc. vous defereetz ¹² soun title qe il ad fet de si haut temps e le quel il afferme par continuance ¹³ sanz interrupcion.¹⁴

Mig. Sire, la ou il dit qe ly e ses aunecestres ount tenuz etc. sanz nule ¹⁵ contribucion faire, Sire, il dit soun talent, qar Johan de L. ael Johan q'ore est e q'i heir etc. fit la contribucion a Richard de K. nostre piere etc. e a la sute faire a la court avandit, prest etc.

Ingh. qe noun, prest etc.¹⁶

II.¹⁷

Un Adam porta son bref *de contribucione facienda*.

Mug. counta vers ly.

Hunt. defendi vers ly et quantqe est encontre la forme ¹⁸ purveaunce etc. les damages etc.; et Sire la ou il ad counté qe un Johan nostre commune aunecestre fut seisi del entier de v acres de terre

¹ *sic*, C, Q, entra, D, T. ² departie, C, Q. ³ In B and G the text is corrupt here. ⁴ *Om.* nule, B, C, G, Q, R. ⁵ *sic*, B, C, G, Q, R, Y, n'entendoms, D, T. ⁶ est, Y, oustr', T, overe, B, G, R, veot estre, C, Q. ⁷ *Ins.* se, Y. ⁸ *Om.* si par . . . desafubler, B, C, G, Q, R. ⁹ ne, B, C, G, Q, R, T. ¹⁰ saunz, C, Q. ¹¹ *Ins.* sauntz contribucioun, R. ¹² defrez, T, defreez, C, defretz, Q. ¹³ *Om.* par quei . . . continuance, B, G, R. For il afferme par continuance, *subs.* il ad continué, C, Q. ¹⁴ *Om.* sanz interrupcion, R. *Add.* Et a ceo il covent respoundre B, *Sim.*, G, R. ¹⁵ *Om.* nule, B, C, G, Q, R. ¹⁶ *Om.* Ingh. . . etc. B, C, G, Q. *Add.* Et alii contrarium, B, C, G, Q, R. ¹⁷ From M collated with P. ¹⁸ *Ins.* de la, P.

common ancestor, [Melior] and Sabine entered as daughters etc. and between them a division was made in the time of the same king, so that John the son of John of Lanbrunmur and his ancestors after the time aforesaid have held the share without making contribution. We ask judgment if by this writ, founded as it is on the statute¹ of Marlborough, which is of a more recent date [than the time of King John], that is to say of the time of King Henry, you can charge us with contribution.

Miggeley. Sir, the statute was not made in defeasance of the common law, but in amendment thereof; and we think that this remedy is applicable as well for tenements which have descended before the statute¹ of Marlborough, as for tenements which have descended afterwards; and seeing that he cannot deny that he is our parcener and that the suit is due from the entire inheritance, we ask judgment if he can thereby free himself from that contribution.

BEREFORD, C.J. This remedy is given by a statute made in the time of King Henry in a case where there was no remedy previously. And the defendant tells you that in the time of King John his ancestors held their share discharged of the contribution; and at that time there was no remedy by this writ; and that he and his ancestors have continued till now that estate so discharged. Therefore before you charge him etc. you must defeat his title which he has made of so ancient a time, and which he strengthens by continuance without interruption.

Miggeley. Sir, where he says that he and his ancestors have held etc. without contributing, he is wrong, for John of Lanbrunmer the grandfather of John who now is [here], whose heir he is etc. made contribution to Richard of K. our father etc. towards doing suit to the court aforesaid. Ready etc.

Hengham. That he did not. Ready etc.

II.

One Adam brought his writ *de contribucione facienda*.

Miggeley counted against the defendant.

Huntingdon defended against him [tort and force] and whatever is against the form of the provision etc. And the damages etc., [and said]:—Sir,² whereas he has counted that one John our common ancestor was seised of the entirety of five Cornish acres of land, and

¹ 52 Hen. III. cap. ix.

² It has been necessary to amend the translation of this speech by the aid of

the other reports, as the French text in this report is corrupt.

Cornewailleys ; apres son deces deit estre etc. a Sarre et a Sabine com a ij filles et un heir etc. dont de Sarre etc. descendi a Adam et de Adam a Willem etc. ; et de Sabyne, si dit il, vint un R. et de R. a Geffrey et de G. a J. e de J. descendi a nous, Sire la dioms qe la ou il dit qe nous tenoms la moyté de v acres de terre Cornewaleys [Sire nous ne tenoms fors une acre de terre Cornewaleys]¹ et en dreit de ceo J. nostre auncestre fut seisi et devia seisi deschargé de cele contribucioun, et nous entrames apres son deces et sumes deinz age, et demaundoms jugement si duraunt nostre noun age devons respondre.

Mugg. Contribucioun si est en lieu de abreggement de suyte, et si le chief seignur distreint pur la sute, et face l'avowerie sur ly, il n'avera mie resoun a dire q'il fut deinz age. Nent plus semblable² de ceste parte.

Hunt. Nostre pere tent ceux tenemenz deschargez de la contribucioun, et nous deinz age entrames et sumes deinz age.

*Migg.*³ Et grant duresce serroit si vous ne fussez chargé, qar nous, qe sumes einz⁴ fesoms la sute pur l'entier ; et si nous eussoms⁵ vers vous nostre recoverir par cesti bref, einz qe la parole targereit par resoun de vostre noun age.

Hunt. *ut prius*, et pria son age.

Stanton. Dites outre.

Kyng. defendi les paroles etc. Sire nous vous dioms qe J. nostre commune auncestre fut seisi en temps le roy Johan q'est avaunt le temps de la limitacioun del estatut de Marlebergh sur quel estatut cesti bref est fondu, et devia en mesme les tenemenz, et le heritage descendi a Sarre et a Sabyne com a ij soers et un heir, et la purpartie fet entre eux en mesme le temps, pur quei depus qe cesti bref est fondu sur l'estatut de Marlebergh et l'estatut n'est mye garraunt a cesti bref si noun pus la confeccioun de mesme l'estatute, jugement s'il pusse accioun aver.

*Mett.*⁶ Nous entendoms qe l'estatut ne est fet en defeasaunce de commune ley, mes en eide de commune ley, nous prioms qe nous pussoms estre eidé par cesti bref fondu sur l'estatut, qar nous sumes ore a la commune ley.

King. La garraunt de ceste ple est fondu sur l'estatut, mes statut ne vous sert point si noun pus la confeccioun del estatut ; et *per consequens*⁷ cesti bref⁸ sur le statut ne vous servereit.

¹ The words in brackets are omitted in *M* and are supplied from *P*. ² *Om.* semblable, *P*. ³ *sic*, *P.*, *Om.* *Migg.* *M*. ⁴ *eygné*, *P*. ⁵ *n'ussoms*, *P*.

⁶ This is no doubt an error for *Migg.* ⁷ *conuersum*, *P*. ⁸ *Ins.* foundu, *P*.

that after his decease [the entirety descended] to [Melior] and Sabine as to two daughters and one heir, and from Melior [her moiety thereof] descended to [Richard], and from [Richard] to [John] etc., and from Sabine, so he said, came one [J.], and from [J.] [a moiety descended] to Geoffrey, and from Geoffrey it descended to J. and from J. to us, Sir, to that we say that, whereas he says that we hold a moiety of five Cornish acres of land, we hold one Cornish acre of land only ; and as to this J. our ancestor was seised and died seised of that acre discharged from the contribution ; and we entered after his decease, and are within age. We ask judgment if during our nonage we ought to answer.

Miggeley. Contribution is to avoid abridgment of suit. If the chief lord distrained for the suit, and avowed upon the defendant, he would have no right to say that he was within age. No more should he have the right in this case.

Huntingdon. Our father held these tenements discharged from contribution, and we entered when within age ; and we are within age.

Miggeley. It would be a great hardship if you were not charged, for we, who are the elder, do the suit for the entirety ; and so we should have our recovery against you by this writ, rather than that the cause should be delayed by reason of your nonage.

Huntingdon said as he said before, and prayed his age.

STANTON, J. Answer further.

Kingshemede defended the words [of court] etc. and said :—Sir, we tell you that J. our common ancestor was seised in the time of King John, which is before the time of the limitation of the statute¹ of Marlborough upon which statute this writ is founded ; and died in [seisin of] the same tenements, and the inheritance descended to [Melior] and Sabine as two sisters and one heir, and partition was made between them at the same time. Wherefore, since this writ is founded upon the statute of Marlborough, and the statute is not a warrant for this writ except [for cases] after the making of that statute, we ask judgment if he can have an action.

Miggeley. We think that the statute was not made in defeasance of the common law, but in aid of it. We pray that we may be aided by this writ founded as it is on the statute, for we are now at the common law.

Kingshemede. The warrant for this plea is based upon the statute, but the statute is of no service to you except [in a case] after it was made. Consequently this writ based upon the statute should not serve you.

¹ 52 Hen. III. cap. ix.

Mug. L'estatut fet etc. en eide de la commune ley, mes nous sumes a la commune ley,¹ *ergo* statut nous eidera del hure qe nous ne sumes mye en cas d'estatut mes le revers.

*Mutt.*² ne fut pas allowé.

Pus dit *Mugg.* Sire nous vous dioms qe un tiel nostre auncestre fut seisi de la contribucioun pus la confeccioun del estatut, prest etc.

Note from the Record.

De Banco Rolls, Easter, 4 Edw. II. (No. 185), r. 99d, Cornwall.

John the son of John of Lanbrunmur was summoned to answer John of Kellestekmur on a plea why whereas it is provided by the common council of the king's realm that if any inheritance from which one suit only was due should devolve on several heirs parceners of the same inheritance or to others by sale or otherwise, one suit only should be done for that inheritance as was formerly wont to be done and that he who has the seniority (*eynecia*) of that inheritance should do that suit for himself and his parceners and the parceners should contribute towards doing that suit, and whereas an inheritance which belonged to Richard of Kellestekmur in Kellestekmur Funtenuaes Chienhale Tresauson and Godelghhen³ from which one suit only is due to the court of Henry de la Pomerai at Tregony has thus devolved upon John of Kellestekmur and John the son of John coheirs and parceners of the same inheritance and John of Kellestekmur who has the seniority of the inheritance does that suit to the court aforesaid for himself and John the son of John etc. the same John the son of John refuses to contribute towards doing the suit, unjustly and to the grievous damage of John of Kellestekmur and against the form of the provision aforesaid etc.

And whereupon John of Kellestekmur by his attorney says that whereas one Richard of Kellestekmur was seised of five Cornish acres of land etc. and after his death the inheritance descended to certain persons Melior and Sabine as daughters etc. and from Melior descended the right of her share etc. to one Richard as son etc. and from Richard to this John who now

6. WROTEHAM v. CANEWOLD.⁴

Covenant.

Precipe A. quod etc. conuencionem inter eos factam de non B. vers C. de dampnis si que per A. apprenticium suum sustinuerit et ac-

¹ *Om.* mes nous . . . ley, *P.*

² This is no doubt an error for *Migg.*

³ Kellestekmur was probably at Callestock in the parish of Perranzabuloe, and the other four places are now called Fentonvease, Chynhale, Tresawson and Godolphin respectively.

⁴ From *M.*

Miggeley. The statute was made in aid of the common law. We are at the common law. Therefore the statute will aid us, seeing that we are not in the case of the statute, but the reverse.¹

Miggeley was not allowed to say this.

Then said *Miggeley*. Sir, we tell you that a certain ancestor of ours was seised of the contribution after the statute was made. Ready are we to aver etc.

Note from the Record (*continued*).

complains etc. as son etc. and from Sabine descended the right of her share etc. to one John as son and heir etc. and from John to one John as son etc. and from John to this John the son of John who now etc. as son etc. and in form aforesaid the inheritance has devolved upon John and John the son of John as parceners etc. and John of Kellestekmur who has the seniority etc. does suit to the court aforesaid for himself and John the son of John etc. The aforesaid John the son of John has hitherto refused and still refuses to contribute towards doing that suit. Whereupon he says that he is injured and has damage to the value of twenty pounds and thereof he produces suit.

And John the son of John comes by his guardian and defends tort and force when etc. and says that he ought not to answer him thereof on this writ, for he says that this writ is founded upon the statute² of Hen. III. published at Marlborough etc. And he says that Richard the common ancestor died seised of the inheritance in the time of king John before the publication of the statute aforesaid. And he says that from the time of king John no contribution was ever made by the ancestors of John the son of John to the ancestors of John of Kellestekmur for the inheritance. And this he is ready to aver whereupon he asks judgment.

And John of Kellestekmur says that John the grandfather of John the son of John after the statute was published made contribution to Richard the father of John of Kellestekmur towards doing suit to the court aforesaid for the inheritance as parcener etc.; and he asks that this may be enquired by the country. Issue is joined and a *venire facias* awarded for the quindene of St. Michael.

6. WROTEHAM *v.* CANEWOLD.³

Covenant.

Command [William] that [justly etc. he hold to Richard] the covenant between them made of acquitting⁴ him and saving him

¹ This speech should be compared with the version of it given in the first report.

² 52 Hen. III. cap. ix.

³ The Christian names are taken

from the record, and are substituted for the initials in the French text, which the scribe has copied carelessly.

⁴ The 'non' of the French text seems to have been inserted in error.

quietando indempnem conseruando Et tiel etc. et fut le cas tiel etc. qe A.¹ fut devenu plegge A. vers C. a la requeste A. et qe A. saverait D. de damages. Et counta quel jour il devynt le plegge A. et de jour qe A. vint a C. d'estre son apprentiz et de jour qe C. se aloigna de servir son mestre ove quatre xx mars de biens et de jour qe C. receut² vers B. en Londres les quatre xx [mars] pur ceo q'il fut le plegge A. et coment il vint a A. et ly pria pendaunt cele ple etc. il fere ne voleit etc.

Et pus le counte chalengé par *Pass.*, pur ceo qil n'avoit mye dit quel jour il fut primes summoné ou attaché a respoundre a C.

Migg. C'est al proces, dont il ne put avantage aver qe vous ne feustes pas partie.

Al demeigne il dit a quel jour.

Pass. Quei avez de covenaut ?

Migg. Vostre fet.

Et concordati sunt etc.

Note from the Record.

De Banco Rolls, Easter, 4 Edw. II. (No. 185), r. 29, Kent.

William of Canewolde of Wroteham is in mercy for several defaults etc.

The same William was summoned to answer Richard of Wroteham of London on a plea that he hold to him a covenant between them made concerning the acquitting and keeping the same Richard harmless etc. against Stephen of Preston of London with respect to the damages if any which he has sustained through John Raulyn his apprentice.

Afterwards they were agreed by licence etc. And William gives half a mark for licence to agree by the pledge of Richard etc.

And the agreement is such that Richard remitted to William every kind of action which avails him against William by reason of the covenant and for this etc. William acknowledged that he owes to Richard of Wroteham bureler of London twenty marks, whereof he will pay to him at the feast of the Nativity of St. John the Baptist five marks, and at the feast of St.

7. MARTON v. FANNEL.³

Un A. porta bref de covenant vers B. e dit qe atort ne lui tint covenant fet entre H. son besael e P. son ael de un mes e une carué

¹ Apparently an error for 'B.'

² Apparently an error for 'recovers.'

³ From Y (fo. 252 r^o).

harmless against [Stephen] for the damages which [Stephen] might sustain through [John] his apprentice. The case was thus:— [Richard] had become the pledge of John against [Stephen] at the request of [William], and [William] was to save [Richard] from damages; and he counted of the day when he became the pledge of [John], and of the day when [John] came to [Stephen] to be his apprentice, and of the day when [John] aloigned himself from his master's service with goods worth eighty marks, and of the day when [Stephen] recovered the eighty marks against Richard in London, because he was the pledge of [John] and how Richard came to William and prayed him during the plea [to pay] etc. and he would not etc.

Afterwards the count was challenged by *Passeley* because he had not named the day on which he was first summoned or attached to answer [Stephen].

Miggeley. This exception relates to the process, and you can have no advantage from it, because you were not a party.

On the morrow *Miggeley* named the day.

Passeley. What have you of the covenant?

Miggeley. Your deed.

They were agreed etc.

Note from the Record (*continued*).

Martin five marks and at the feast of Easter five marks, and at the feast of Whitsunday five marks. And if he shall not do so, he grants that the sheriff may cause to be made of the lands and chattels etc. into whosoever hands they may come etc.

Afterwards on the octave of St. John the Baptist 5 Edw. II. Richard comes and says that four marks of the said term of Pentecost are arrear to him etc. and he asks that all the goods and chattels of William etc. and likewise a moiety of his lands and tenements etc. may be delivered to him etc. to hold etc. until he shall have levied the four marks thereof. Therefore let Richard have a writ under the statute¹ etc. and let him cause to be known here how etc. on the octave of St. Michael. Afterwards on the morrow of the Ascension 7 Edw. II. Richard came and acknowledged that William had satisfied him concerning the debt. Therefore let William be quit thereof.

7. MARTON *v.* FANNEL.

One A. brought a writ of covenant against B. and said that wrongly did he not hold to him the covenant made between H. the defendant's great-grandfather and P. the plaintiff's grandfather of one messuage

¹ Statutum Mercatorum, 13 Edw. I.

de terre ove les appurtenances en C. E pur ceo atort qe mesme cestui H. nostre besael lessa mesme ceux tenemenz a P. nostre ael e ses heirs a terme de xx aunz, par quel lese il fut seisi par deux aunz taunqe mesme cely H. ly osta de son terme, par quei mesme cesti A. souvent est venuz a mesme cesty B. com a heir H. e lui pria q'il lui tensit covenant etc., il tenir etc., a damage etc.

Grant. defendi etc. e demanda jugement desicom il counta par mi covenant fet a autre persone si damages vers nous de trespas fet a autre puisse dereigner.

Heng. Est ceo le fet vostre auncestre ?

Grant. Jeo n'ay mester granter ne dedire, mes demandoms jugement de vostre bref e de vostre counte.

Hervi. Les uns de nos compaignons dient q'il iad covenant perpetuel de qel le heir put avoir sa accion si lui seit enfreint, mes covenant a terme des aunz qe est com chatel dont l'accion est regardant les executours plus tost qe al heir, e pur ces demorez la venue *Sire W. Ber.*

Lendemain quant *Sire W.* vint, A. fut noun swi etc.

Note from the Record.

De Banco Rolls, Easter, 4 Edw. II. (No. 185), r. 131, Yorks.

Richard Fannel and Emma his wife were summoned to answer William the son of William of Marton on a plea that they should hold to him a covenant made between William Marton the grandfather of William the son of William whose heir he is and Ellis of Rilleston the great-grandfather of

8. RISEBURY v. RISEBURY.¹

Covenant ou fin se leva de partie des tenementz contenuz en le bref et de partie ne mie.

Un home porta son bref de covenant, le quel bref comprist iiij mes et iiij^{xx} acres de terre.

Cant. Sire, jeo face protestacion a la court qe un mees e xxx acres de terre sont tenuz du roi en chef de ceo q'est contenu²; e nous n'avoms pas de³ commission du roi etc. Mes si la court puisse soeffrir la pees estre tret⁴ du remenant nous treroms volunters.

¹ From *D* collated with *C*, *Q*, *T*. ² *Om.* de . . . contenu, *C*, *Q*.

³ *Om.* de, *C*, *Q*, *T*. ⁴ *For* la . . . tret, *subs.* pur treter la pees, *C*, *Q*.

and one carucate of land with the appurtenances in C. And for this wrongly, because this same H. [his] great-grandfather leased the same tenements to P. our grandfather and his heirs for a term of twenty years, and by this lease he was seised for two years until this same H. ousted him from his term. Therefore has this same A. often come to this same B. as the heir of H. and prayed him to hold the covenant etc. and B. to hold it [has refused] etc. To his damage etc.

Cambridge defended etc. and since the plaintiff counted by a covenant made to another person, he asked judgment if he could deraign damages against [him] for a trespass done to another.

Hengham. Is this the deed of your ancestor?

Cambridge. I have no need to grant or to deny it. We ask judgment of your writ and your count.

STANTON, J. Some of our companions say that there is a perpetual covenant upon which the heir can have his action, if it be broken, but a covenant for a term of years¹ is like a chattel, for the recovery of which the action belongs to the executors rather than to the heir. Therefore wait till Sir William of BEREฟอร์ด comes.

The next day when Sir William came A. was non-suited.

Note from the Record (*continued*).

Emma whose heir she is concerning three tofts and four bovates of land in Brogton² in Cravene etc.

Afterwards William did not sue etc. Therefore let Richard go thereof without day; and let William and his pledges be in mercy. Let the names of the pledges etc.³

8. RISEBURY *v.* RISEBURY.

A case of covenant, in which a fine was levied of one part of the tenements contained in the writ, and not of the other part.

A man brought a writ of covenant which comprised four⁴ messuages and four score acres of land.

Cambridge. Sir, I protest to the court that one messuage and thirty acres of land of the property which is contained [in the writ] are held of the king in chief, and we have no commission from the king [concerning that]. But if the court will allow the peace to be drawn of the remainder we will draw it willingly.

¹ It should be noticed that according to the report the lease was made for a term of years to the lessee and his heirs. Nothing however is said about the term of years in the record.

² Broughton, near Skipton.

³ The words 'de tribus septimanis' are written in the margin of the roll.

⁴ It will be noticed that this description of the parcels is different from that given in either of the records printed below.

Et fut receu par *Ber.*

Caunt. H. conust les tenemenz en le bref contenuz forpris un mees e xxx acres de terre estre le dreit etc. *non obstante* qe le bref ne voleit nul forpris e qe le reconissour retient¹ vers lui² un mes e les xxx acres de terre.

Notes from the Record.

I.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), Roll 257d, Hereford

Walter of Rysebury was summoned to answer John the son of Walter of Rysebury and Walter the son of Walter of Risebury on a plea that he hold to them a covenant between them made of two messuages and fifty-six acres of land in Risebury and Boleye.³ And now come John and Walter and as to one messuage and twenty acres of land they are agreed. And Walter of Risebury gives half a mark for licence to agree. And they have the chirograph by William of Denum counter, etc.

II.

Feet of Fines, Case 28, File 29 (No. 28a).

This is the final agreement made in the court of our lord the King at Westminster on the morrow of All Souls 4 Edw. II. before . . . Between Walter of Risbury and Catherine his wife and Hugh the son of the same Walter plaintiffs and John of Bradefeld deforciant of one messuage seventy acres of land and three acres of meadow in Rysburi and Humbre,⁴ whereupon a plea

9. YELVERTON *v.* REPPES.

I.⁵

Dette ou un executour demaunda vers ly mesme.

Laurence de Repples fuist tenu en une dette a Edmon de Repples. E. devia,⁶ fit ses executours M. sa femme et l'avaundit L. Le testament fuist prové, et furent resceu⁷ come executours devaunt les ordiners et

¹ resceut, *Q.*

² *Ins.* mesme, *C, Q, T.*

³ Risbury is in the parish of Humber near Leominster, and Bowley lies a little to the south of Risbury.

⁴ It seems probable that this is the fine levied upon the foregoing licence to agree. It is therefore remarkable that the descriptions of the parcels should not be in agreement in the two documents, more especially as the licence was expressly granted for a smaller quantity of property than that comprised in the writ. ⁵ From *B* collated with *G, M, P, R.* ⁶ *Ins.* et, *M, P.* ⁷ respoundu, *R, G.*

And he was admitted to this by BEREฟอร์ด.

Cambridge. H. acknowledges the tenements contained in the writ except one messuage and thirty acres of land to be the right etc.; and this was notwithstanding the fact that the writ spoke of no exception, and that the conusor retained to himself one messuage and thirty acres of land.

Notes from the Record (*continued*).

of covenant was summoned between them in the same court, that is to say that the aforesaid Walter has acknowledged the tenements to be the right of him John as those which the same John has of the gift of the aforesaid Walter. And for this acknowledgment fine and agreement John has granted to Walter Catherine and Hugh the aforesaid tenements and those has he rendered to them in court to have and to hold to Walter Catherine and Hugh of the chief lords of that fee by the services which to those tenements belong all the life of them the said Walter Catherine and Hugh. And after the decease of Walter Catherine and Hugh the tenements will remain entirely to John and Walter the sons of the aforesaid Walter and the heirs of the body begotten of him John to hold of the chief lords of that fee by the services which to those tenements belong forever. And if it should happen that John should die without an heir of his body begotten then after the decease of the same John and Walter the sons of the aforesaid Walter the aforesaid tenements shall remain entirely to Giles the son of the aforesaid Walter of Rysbury and his heirs to hold of the chief lords of that fee by the services which to those tenements belong forever.

9. YELVERTON *v.* REPPES.

I.¹

Debt. An executor's demand against himself.

Lawrence of Reppes was bound in a debt to Edmond of Reppes. Edmond died, and made Maud his wife and the aforesaid Lawrence his executors. The will was proved, and they were received as executors

¹ This appears in the Old Edition on p. 101. The proper names are corrected by the record.

administrerent. M. devia,¹ fit ses executours T.² et N. Et vynderent les avaunttdits T.² et N. executours M. ensemblement ove L. de Repples executours E. et porterent bref de dette vers mesme celui L. et le firent nomer defendaunt Laurence le fuiz Rauf.³ Et fuist le bref tiel: Comaundetz a Laurens⁴ etc. q'il rende a T.² et N. executours du testament M. executour E. et a Laurence de Repples⁵ executours mesme cestuy E. etc. Et counta: Ceo vous moustre T.² et N. executours du testament M. qe fuist la femme E. executour du testament celui E. ensemblement ove Laurence de Repples coexecutour la dit M. du testament l'avaunttdit etc. qe severé est par agarde et ne siwit point, qe ici sount qe L. le fuitz R. etc. qe illoesqe est atort etc.⁶

Herle. Moustretz qe vous estes executours, et qe vous puissetz come executour demaunder et moustretz qe M. et L. de Repples soient executours E.⁷

Scrop. Vietz cy testament l'un et l'autre tesmoignantz. (Et myst avaunt ij testamentz qe tesmoignerent *ut supra*; et en le⁸ testament L. fuist nommé Laurence le fuiz R. et en le bref qaunt a ceo q'il fuist pleyntif L.⁹ de Repples.)

Toud. Sire L. le fuitz R.¹⁰ est nommé en le testament executour et en le bref il n'y ad nul L.⁹ le fuiz R. q'est pleintif, einz est Laurence de Repples¹¹ qe n'est pas executour. Jugement etc.

Heng. Vous est mesme la persone.

Herle. Yl y ad L.⁹ le fuiz R. nommé en testament executour a qi acciounne est reservee si nul y soit.¹² Et yl dyent en lour bref:—Comaundetz a L. le fuiz R. q'il rende a L. de Repples, qe n'est pas executour par le testament. Jugement.

*Scot.*¹³ Laurence est mesme la persone q'est pleintiff et deffendant, et nous le nomons par autre sournoun. Et pur ceo ne siwit¹⁴ yl mye qe nostre bref s'abatera qe nous veoms qe homme purra vouchier luy mesmes par variaunce d'auncestre ou de sournoun et¹⁵ unqore n'est mye le vouchier abatable, auxint par de cea.

*Heng.*¹⁶ Graunt duresse serroit, si nous perdissoms nostre bref par t'unt, dil houre qe nous voloms averer qe c'est¹⁷ mesme la persone.

¹ *Ins.* et, *M, P.* ² *Ins.* e Mabilie sa femme, *M, P.* ³ *Om.* et le . . . Rauf, *M, P.*
⁴ *Ins.* le fitz Rauf, *G*; de *R, M, P.* ⁵ le fitz Rauf, *M, P.* ⁶ The text of the count in *M, P,* and *R* is corrupt. ⁷ *For* et qe . . . executours E. *subs.* celi qi executour il se diount, *M, P.* ⁸ l'un, *R, G.* ⁹ *sic, R, G*; *R., B.* ¹⁰ *Om.* le fuitz R., *P*; *Ins.* de Replees, *M, P.* ¹¹ le fitz Rauf, *M, P.* ¹² enseit, *G, R.* *For* est . . . soit, *subs.* il seit, *M,* il suent, *P.* ¹³ *Scrop, R.* ¹⁴ enseut, *R, fut, G.*
¹⁵ *Om.* et, *M.* ¹⁶ *Om.* Hengham, *Ins.* qe, *M, P.* ¹⁷ il est, *R.*

before the ordinaries and administered. Maud died and made [Adam of Yelverton and Margaret his¹ wife and Nicholas of Yelverton] her executors; and the aforesaid [Adam and Margaret and Nicholas] the executors of Maud came together with Lawrence of Reppes the executors of Edmond and brought a writ of debt against this same Lawrence. And they named him as defendant Lawrence the son of Ralph. The writ ran:—Command Lawrence etc. that he render to [Adam and Margaret and Nicholas] executors of the will of Maud executor of Edmond and Lawrence of Reppes executor of this same Edmond etc. And they counted:—This shows you [Adam and Margaret and Nicholas] executors of the will of Maud the widow of Edmond the executor[s] of the will of this Edmond together with Lawrence of Reppes, Maud's coexecutor of the will of the aforesaid Edmond etc. (who is severed by award, and does not sue) who are here that Lawrence the son of Ralph etc. who is there wrongly etc.

Herle. Show us that you are executors, and that you can demand as executors; and show us that Maud and Lawrence of Reppes are executors of Edmond.

Scrope. See here the wills of both of them which attest these facts. (And he produced two wills which attested as above stated; and in the will he was called Lawrence the son of Ralph, and in the writ as regards his being a plaintiff he was called Lawrence of Reppes.)

Toudeby. Sir, Lawrence the son of Ralph is named executor in the will, and in the writ there is no plaintiff named Lawrence the son of Ralph, but there is a plaintiff Lawrence of Reppes who is not an executor. Judgment etc.

Hengham. You are the same person.

Herle. There is a Lawrence the son of Ralph named in the will as executor, and to him an action is reserved if any there be. And they say in their writ:—'Command Lawrence the son of Ralph, that he render to Lawrence of Reppes' who is not an executor under the will. Judgment.

Scotre. Lawrence is one and the same person, who is both plaintiff and defendant; and we name him [as plaintiff] by another surname; and for this reason, if he did not sue our writ would be abated. We may see a man vouch himself by a variance of his ancestor's name or his surname, and yet the voucher is not to be abated; so here.

Hengham. It would be a great hardship if we lost our writ by such an objection, seeing that we are willing to aver that these are one and the same person.

¹ The wife is mentioned in two MSS. only.

Toud. Si vous eussetz dit :—Commaundetz a L. de Repples¹ q'il rende a L. le fuiz R.,² la ou il ad dit le revers,³ vous eussetz bien dit.⁴ (Et a ceo il furent assentauntz etc. *Ber.*, *Scrop* et *Stanton*, justices.)

*Berr.*⁵ Prietz coungé de quere meillour bref. Et pur ceo qe vous estes executours, la court vous serra favorable et gracieuse.

Hengham issit d'emparker, revyent et dit q'il demorast a lours agardes.

Et furent ajournetz as utaves de la Trinité, au quel jour les pleyntifs furent nounsiwitz, pur ceo q'il douterent le jugement etc.

II.⁶

Ou variaunce fut alleggé entre le testament e le bref.

Jon Gawilwerton e T. de Gawilwerton executours du testament Alice qe fut femme Edmond de Reples executour du testament le dit Edmond, ensemblement ove Laurence de Repples coexecutour du dit testament portent un bref de dette ver Laurence de Repplis. E le bref fut :—Precipe Laurence de Repples quod iuste etc. reddat *ut supra* e noma les executours la femme e Laurence le fyz Rauf coexecutour predicti testamenti decem libras quas eis detinet etc. Laurence le fyz R. fut noun swi e puis somoné e severé par jugement.

A qel jour *Herle* pur L., nous demaundoms desicom il est nommé Laurence de Repples executour en le testament e en le bref est nommé Laurence le fyz Rauf executour etc.

Malm. Mesme la persone qe est nommé Laurence le fyz R. est Laurence de Repples, e prest del averer.

Herle. Si tiel averement se joindreit il ne prendreit a nul issu, par quei etc.

Malm. Ceo est mesme la persone qe est executour e dettour, e ben pert par recorde ou il fut noun swi somoné e severé par jugement. E cest accioun si est testamentarie e issi autri accioun a quei la court deit avoir regard. E demaundoms jugement si le bref ne seit assez bon.

Herle. Nous ne vous toloms icy nul accioun, einz vous chasoms a melior bref.

¹ *Om.* de Repples, *Ins.* le fitz Rauf, *M*, *P*. ² *Om.* le fuiz R., *Ins.* de Replez, *M*, *P*. ³ *Om.* la ou . . . revers, *M*, *P*. ⁴ *Ins.* qe donqe serroit le bref accordaunt al testament, *C*. ⁵ *Om.* *Ber.*, *R*; *subs.* Pus dit *Ber.*, *M*. ⁶ From Y (fol. 244 v°).

Toudeby. If you had said :—Command Lawrence of Reppes that he render to Lawrence the son of Ralph, where [you] said the reverse you would have been right; and to this BEREFORDE, SCROPE and STANTON the justices assented.

BEREFORD, C.J. Pray leave to seek a better writ. And because you are executors the court will be favourable and gracious to you.

Hengham went out to imparl and came back and said that he would abide by the award of the court.

And they were adjourned till the octave of Trinity, on which day the plaintiffs were non-suited, because they doubted about the judgment etc.

II.¹

A case in which there was a variance between a will and a writ brought by the executor.

[Adam of Yelverton and Margaret his wife and Nicholas of Yelverton] executors of the will of [Maud] the widow of Edmond of Reppes, which [Maud] was an executor of the will of the said Edmond, together with Lawrence of Reppes, coexecutors of the said will [of the said Edmond] brought a writ of debt against Lawrence of Reppes, and the writ ran :—Command Lawrence of Reppes that justly etc. he render as above, (and it named the executors of [Maud] and Lawrence the son of Ralph, coexecutor[s] of the aforesaid will) ten pounds which he detains from them etc. Lawrence the son of Ralph was non-suited, and afterwards summoned and severed by judgment.

At the day given *Herle* (on behalf of Lawrence). We ask judgment on the ground that he is called Lawrence of Reppes as executor in the will, and in the writ he is called Lawrence the son of Ralph executor etc.

Malberthorpe. Lawrence of Reppes is the same person as Lawrence the son of Ralph, and ready are we to aver it.

Herle. If such an averment were joined it would lead to no issue. Wherefore etc.

Malberthorpe. The same person is both executor and debtor and it is apparent on the record, which shows that he was non-suited, summoned, and severed by judgment. This is an action under a will, and so the action is in the name of another, and to this the court ought to have regard. We ask judgment if the writ is not sufficiently good.

Herle. We are not depriving you of any action here, but driving you to a better writ.

¹ The proper names are corrected by the record.

Herlai. La court ad grant regard qe ceo est mesme la persone e accioun testamentarie; e si le bref s'enbatist, ceo serreit en retardacioun du testament.

Alie die Herle uenit et repeciit prius dicta.

Ber. Si vous volez quere melior breue, la court vous serrez gracieuse.

Malm. pur le executour. Nous demoroms en vos agards.

Ber. Tendez vous jugement in octabis sancte Trinitatis.

Et postea il fut noun swi etc.

Note from the Record.

De Banco Rolls, Easter, 4 Edw. II. (No. 185), r. 75, Norfolk.

Lawrence of Reppes in mercy for several defaults etc. The same Lawrence was summoned to answer Adam of Yelverton and Margaret his wife and Nicholas of Yelverton (executors of the will of Maud the widow of Edmond of Reppes) lately coexecutors with Lawrence the son of Ralph of the will of the aforesaid Edmond on a plea that he render to them and Lawrence the son of Ralph coexecutors etc. ninety-five marks, which he unjustly detains from them. And be it known that Lawrence the coexecutor etc. heretofore was summoned to sue together etc. and he did not sue etc. so that it was awarded that Adam and the other executors should sue without him etc. And whereupon the same executors by their attorney say that—whereas Lawrence of Reppes on Tuesday [9 March 129 $\frac{3}{4}$] before the feast of St. Gregory, 22 Edw. I. at Norwich bound himself to be holden to Edmond whose executors they are in fifty marks of silver paying thereof to Edmond at Easter in the same year ten marks and at the Nativity of St. John in the same year ten marks and at the feast of St. Mary Magdalen in the same year ten marks and at the feast of All Souls in the same year ten marks and at the feast of Nativity of our Lord next following ten marks. And likewise in the same day year and place whereas Lawrence of Reppes bound himself to be holden to Edmond in thirty pounds sterling, paying thereof to Edmond on the feast of the Annunciation of the Blessed Mary in the same year ten pounds and at

10. FINCHYNGFELD v. BYRCHO.

I.¹

Ou taillie enselé contrevalut especiauté, et ou femme soule obligé charge le baroun qe la esposa apres.

Ceo vous mostre Jon de Finchyngfeld citein de Loundres qe ci est qe R. e Alice sa femme qe illoques sont atort ly detenent v livres e x souz d'argent. E pur ceo atort qe ou mesme cesti Jon apresta al dit Alice

¹ From Y (fo. 244 v^o).

STANTON, J. The court has full regard to the fact, that you are one and the same person, [executor and debtor,] and that the action is testamentary, and that if the writ were abated it would be in retardation of the will.

On another day *Herle* came and rehearsed what had been said before.

BEREFORD, C.J. If you wish to seek another writ, the court will be favourable to you.

Malberthorpe (for the executors). We will abide by your award.

BEREFORD, C.J. Await your judgment till the octave of Trinity.

Afterwards they were non-suited.

Note from the Record (*continued*).

Whitsunday next following ten pounds and at the feast of St. Lawrence next following ten pounds—Lawrence of Reppes those moneys to Edmond in his lifetime did not render etc. and to the executors after the death of Edmond till now have refused to render etc. and still refuse. Whereupon he says that he is injured and has damage to the value etc. of one hundred marks. And thereof they produce suit etc. And they proffer two writings obligatory under the name of Lawrence of Reppes which witness the debt in the form aforesaid etc.

And Lawrence of Reppes comes by his attorney. And he defends tort and force when etc. And he asks that Adam and the others may show that they are executors etc. And Adam and the others proffer the will of the deceased etc. And this having been inspected it is found that Edmond the testator etc. appointed his executors one Lawrence of Reppes and Maud the wife of Edmond etc.

And Lawrence of Reppes says that he ought not to answer [them] thereof on this writ, for he says that the will witnesses that Edmond appointed his executors, to wit, Maud and Lawrence of Reppes, and Lawrence of Reppes the executor etc. is not named in their writ etc. He asks judgment. A day is given them here on the octave of Trinity in the same state as now etc.

10. FINCHINGFELD *v.* BYRCHO.

I.

Where a sealed tally was equivalent to specialty, and where a woman who was bound when sole charged the husband who married her afterwards.

‘ This shows you John of Finchingfeld citizen of London, who is here, that R. and Alice his wife who are there wrongly detain from him five pounds ten shillings of money. And for this wrongly, because

taunt com ele fut sole le dit argent e la dit A. leaument enprist de paier a teu jour etc. E en prove de la dette mist avant taille enselee du seal Alice.

Mugg. defendit tort e force e les damages e rehersa lour demande e dit qe nul dener ly deit. R. e Alice prest sont a fere par lour ley.

Hengh. Quei responez a vostre fet ?

Mugg. Qe est ceo un fut ; auxi bien put ceo estrè vostre fet com le nostre.

Hervi. Il vous dyent qe ceo est une taille enselee du seal Alice. Respondez a ceo.

Mugg. Nous sumes prest a defendre par nostre ley.

Et postea *Bereford* dixit in consilio, qe si un escrit fut rasté ou suspicieuse le plante du seal le afermerait bon, auxi par de cea.

Ber. a *Mugg.* Savez autre chose dire pur quei il ne deivent ceste dette vers vous dereigner ?

Mugg. Si vous agardez qe nous devons autre chose respondre, nous responderoms etc.

Ber. Devoms nous agarder, si vous devez respondre ? Mes veez vous si vous volez cel alaement atrencher pur response, e dont nous aviserom.

Mugg. Lisez le fet.

Ridenhale legit factum sic, Contra Aliciam que fuit uxor Thome le Blound de denariis mutuatis eidem Alicie soluendis Iohanni de Finchingfeld ciui Londonie in festo sancti Michaelis anno regni regis Edwardi xxx. Data apud Londoniam etc.

Mugg. Jugement de la variaunce entre le bref e le especiauté, qar le especiauté veut Alice qe fut la femme Thome le Blounde, e le bref veut Alice femme R. etc.

Grantebr. Ceo est tut un Alice, prest del averer.

Ber. a *Mugg.* Volez vous qe femme eit autre noun qe son baron ?

Mugg. Lessez nous ver le fet.

Et uidit factum et dixit, Nient nostre fet, prest etc.

Et alii contrarium.

Ber. Joe vous say graunt gré qe vous estes a tel issue, pur ceo q'il est marchaunt, qar home ne put nynt user en ceo cas lei de terre en touz poinz ver marchaund etc.

whereas this same John lent the said money to the said Alice whilst she was sole, and the said Alice loyally undertook to pay it on a certain day etc.' (And in proof of the debt he put forward a tally sealed with the seal of Alice.)

Miggeley defended tort and force and the damages, and rehearsed [the] demand; and he said that no penny thereof did she owe him. Ready are R. and Alice to prove this by their law.

Hengham. What do you answer to your deed?

Miggeley. That it is a piece of wood which may be as much your deed as ours.

STANTON, J. They tell you that it is a tally sealed with the seal of Alice. Answer that.

Miggeley. We are ready to deny it by our law.

Afterwards, BEREFORD, C.J., said by way of counsel that if a writing were erased or suspicious the imprint of the seal would affirm it as good, and so in this case.

BEREFORD, C.J., to *Miggeley*. Can you say ought else why they should not deraign this debt against you?

Miggeley. If you award that we must make other answer, we will answer etc.

BEREFORD, C.J. Is it for us to award if you shall answer or not? But do you consider if you will wage your law for your answer; and then we will be advised thereon.

Miggeley. Read the deed.

Ridenhale read it thus:—Against Alice the widow of Thomas le Blund of moneys lent to the same Alice, to be paid to John of Finchingfeld citizen of London on the feast of St. Michael 30 Edw. I. Given at London etc.

Miggeley. We ask judgment of the variance between the writ and the specialty, for the specialty says Alice the widow of Thomas le Blund, and the writ says Alice the wife of R. etc.

Cambridge. It is one and the same Alice. Ready are we to aver it.

BEREFORD, C.J., to *Miggeley*. Do you wish that the wife have a different name from her husband?

Miggeley. Let us see the deed.

He saw it and said:—Not our deed, ready etc.

And the others to the contrary.

BEREFORD, C.J. I am right glad that you have come to this issue, because he is a merchant. In such a case as this, a man cannot use the law of the land in all its points against a merchant etc.

II.¹

Dette vers homme et sa femme ou taille enseallé fut mys avant en prove.

Un homme porta son bref de dette vers un homme e sa femme, dont² la femme se out obligé taunt com ele estoit sole par un taille ensealé. Ly homme et sa femme par un Johan de B.³ attourné gagirent lour ley encountre la taille.

Cant. Est ceo le fet vostre auncestre ou noun ?

Mugg. A ceo n'avoms mester a respondre, qe il pout meme aver fet ⁴ tite mult bien averoms ⁵ en cel meyns ou plus a sa volonté.

Ber. Quei ditez vous de vostre seale qe est pendaunt ?

Mugg. Si jeo meise mon seale a un escrit sanz lettre estre escript le seal ⁶ chargera pas, par quei ne estut pas a respondre a cele seale.

Stanton. Quidez vous a la ley avenir encountre vostre fet demene ?

Mugg. Si vous agardez qe nous n'averoms pas la ley nous respondrons assez.

Berr. Nous agarderoms si vous devez respoundre ou noun. E veez une chose; jeo vous face bien asaver; si vous demurez en jugement sur le quel vous averez la ley ou ne mye, vous ne resorterez pas a autre response si jugement passa encountre vous.

Mugg. L'oye de fet. Et habuit. Et pus demaunda la vewe de fet et habuit. Et pus dit 'Nent nostre fet etc. prest etc.'⁷ Et alii econtra.

Jeo me paye bien qe vous avez pris tiel issue en descharger de nous, nous ⁸ vous chargeroms jammes a cel averrement qar il pout aver dyt qe rien ne lui deit, prest etc. et issint aver esté en pays.

Stanton. Si ceo fut escript ensealé ceo serreit un, qe taille n'est pas proprement fet com escript, qar l'autre put estre ousté,⁹ pus estre autrement q'ele fut avaunt a la volonté celui qe l'ad en garde sanz ceo qe homme ne l'apercevereit, issint n'est il pas de escrit.¹⁰

¹ From *M* collated with *P*. ² *Om.* dont, *P*. ³ *Om.* un Johan de B., *P*.
⁴ aver fet meme, *P*. ⁵ *Om.* averoms, *P*. ⁶ *Ins.* ne, *P*. ⁷ *Ins.* qe, *P*. ⁸ *Ins.* ne, *P*. ⁹ *Ins.* e, *P*. ¹⁰ 'de escrit,' supplied from *P*. Reading doubtful in *M*.

II.

A case of debt against a man and his wife in which a sealed tally was produced as proof.

A man brought his writ of debt against another man and his wife, for the payment of which debt the wife had bound herself whilst she was sole by a sealed tally. The man and his wife by one J. de B. their attorney waged their law against the tally.

Cambridge. Is this your ¹ deed or not ?

Migeley. To that we have no need to answer, for he himself could have made a title quite well on this tally for a greater or less sum at his will.

BEREFORD, C.J. What do you say about your seal, which is pendent thereto ?

Migeley. If I put my seal to a document without anything being there written, the seal will [not] charge me. Therefore I have no need to reply to this seal.

STANTON, J. Do you think to come to your law against your own deed ?

Migeley. If you award that we do not have our law, we will answer sufficiently.

BEREFORD, C.J. We will award if you are to answer or not ; but consider one thing, which I will have you know. If you abide our judgment whether you have your law or not, you will not resort to any other answer, if our judgment pass against you.

Migeley demanded oyer of the deed and had it. Then he demanded view of the deed and had it. Then he said, ' Not our deed etc. ready etc.' The others to the contrary.

[BEREFORD,² C.J.] I am glad that you have accepted this issue in relief of us, for we should never have charged you with such an averment, for they well might have said that nothing do they owe, ready etc. and in that way could have had a jury.

STANTON, J. If this were a sealed writing it would be one thing ; but a tally is not properly made as a writing, for such writing can be tampered with and then be different from what it was before at the will of him who has the tally in custody, without anyone perceiving it ; and this is not so with a writing [on parchment].³

¹ The question is evidently stated wrongly in the French text.

² The Chief Justice begins a speech similarly in the first report.

³ Sealed tallies are discussed in the case of *Beneyt v. Lodewyk* heard in Hilary term 3 Edw. II. (vol. iii. pp. 46, 47).

III.¹

Un homme porta son bref de dette etc.

Migg. Quez aviez de la dette ?

Caunt. mist avaunt un taille enselé etc.

*Migg.*² tendy la ley, et fut ousté par BER. Et puis dedit la taille, et fut a ceo resceu ; quod mirum uidebatur aliquibus, quia secundum quosdam non infligitur³ pena propter huiusmodi dedictum sicut infligeretur si aliquid scriptum esset dedictum etc. ; et ideo mirum.⁴

Note from the Record.

De Banco Rolls, Easter, 4 Edw. II. (No. 185), r. 122, Essex.

William of Byrcho and Margaret his wife in mercy for several defaults etc.

The same William and Margaret were summoned to answer William of Fynchingfeld on a plea that they render to him one hundred and four shillings which they owe to him and unjustly detain etc. And whereupon William of Fynchingfeld by Nicholas Kempe his attorney says that (whereas he on [7 April 1306] Thursday in Easter week 34 Edw. I. at Althorn⁵ in the county of Essex lent to the said Margaret before William of Bircho married her while she was sole the aforesaid moneys which she ought to have paid him on the feast of the Nativity of St. John the Baptist next following,) the same Margaret rendered not the money to William of Fynchingfeld on that day etc., and William of Bircho and Margaret have hitherto detained the moneys from him and still refuse to render them. Whereupon he says that he is injured

11. UPTON *v.* MILTON.⁶

De debito petito per obligacioun ou acquitaunce fut usé en barre ;
qe fut dedit, et pus proces continué etc. Le defendaunt fit defaute.

Un homme porta soun bref de dette etc. e bota⁷ avant un fait⁸ qe tesmoigna la dette estre due.⁹ Le defendant mist avant une acquitance qe tesmoigna la soute etc. la quele acquitance le demandant¹⁰ dedist. Comandé fut de faire¹¹ venir pais etc. Continuerent tanqe¹² as utaves de la Trinité, a quel jour les parties furent demandez e le pleyntif vynt e¹³ le defendant ne vynt pas, par ou¹⁴ fut agardé qe le demandant recoverast sa dette e ses damages taxez par la courte a C. souz¹⁵ etc.

¹ From *T* collated with *C*, *D*, *Q*. ² *Mutt.* *Q*, Mutford, *C*. ³ infligatur, *C*, *Q*.
⁴ *Om.* infligeretur . . . mirum. *Ins.* propter scriptum si dedictum fuisset, *C*, *Q*.
⁵ Althorne is six miles south-east of Maldon. ⁶ From *D* collated with *C*, *Q*, *T*.
The headnote is from *T*. ⁷ mist, *C*, *Q*. ⁸ escrit, *C*, *A*. ⁹ *Om.* estre due,
C, *Q*. ¹⁰ plaintiff, *C*, *A*. ¹¹ *Om.* de faire, *C*, *Q*. *Ins.* etc. q'il feit, *C*. ¹² *Om.*
continuerent tanqe, *C*, *Q*. ¹³ *Om.* le . . . e. *Ins.* continuerent tanqe, *C*, *Q*.
¹⁴ quei, *C*, *Q*. ¹⁵ *Om.* sa dette . . . a C. souz, *C*, *Q*.

III.

A man brought his writ of debt etc.

Miggeley. What have you to prove the debt ?

Cambridge produced a sealed tally.

Miggeley tendered his law, but was ousted by BEREฟอร์ด, C.J. Then he denied the tally, and to this he was received. This seemed strange to some, because according to certain of them a penalty is not inflicted for a denial of this kind, as it would be if a writing were denied; and it is strange for this reason.

Note from the Record (*continued*).

and has damage to the value of twenty pounds etc. And thereof he brings suit etc. And he produces a tally under the name of the aforesaid Margaret etc. who was the wife of Nicholas of Allegate signed with his seal which witnesses the debt, of which the date is at Althorn in the county of Essex etc.

And William of Byrcho and Margaret by Henry of Snypston their attorney come and defend tort and force when etc.; and they say that they ought not to be charged in this behalf by virtue of the tally, because they say that the tally is not the deed of Margaret, and of this they put themselves upon the country.

Issue is joined and a *venire facias* awarded for the octave of St. Michael.

And be it known that the tally which is denied (*dedicta*) remains in the custody of J. Bacun the king's clerk etc.

11. UPTON *v.* MILTON.

A case of debt demanded by bond, in which an acquittance was used as a bar. The acquittance was denied. Then process was continued etc. The defendant made default.

A man brought his writ of debt etc. and produced a deed which witnessed the debt to be due. The defendant produced an acquittance which witnessed the payment etc.; and this acquittance the demandant denied. The sheriff was ordered to cause a jury to come etc. The case was continued until the octave of Trinity. At that day the parties were demanded. The plaintiff came, and the defendant did not come. whereupon it was ordered, that the demandant should recover his debt, and his damages, which were taxed by the court at one hundred shillings.

Et sic nota si jeo conusse une dette tout boute jeo avant fait¹ en court qe tesmoigne la soute, si le fait qe jeo mette avant seit dedite, si jeo ne suwe pas a trier ceo fait,² le jugement se fra solom ma conissance, ut patet hic.³

Note from the Record.

De Banco Rolls, Easter, 4 Edw. II. (No. 185), r. 149, London.

Luke of Milton was summoned to answer Robert of Upton of London on a plea that he render to him seven pounds which he owes to him and unjustly detains etc. And whereupon Robert by Walter of North his attorney says that (whereas Luke and a certain Thomas his brother on the [28 November 1299] Saturday next before the feast of St. Andrew the Apostle, 28 Edw. I. at London bound themselves to be holden by their writing each one of them for the whole to Robert in the aforesaid debt for good cloths bought from him and to Luke and Thomas delivered to be paid to Robert or his certain attorney at Cordewanerestrete, London, on the [25 April 1300] feast of St. Mark the Evangelist next following) Luke and Thomas have hitherto always detained the debt from Robert and the same Luke still refuses to render it to him. Whereupon he says that he is injured and has damage to the value of one hundred shillings; and thereof he brings suit etc. And he proffers the writing under the names of Luke and Thomas which witnesses the debt in the form aforesaid etc.

And Luke by John of Luffewyk his attorney comes and defends tort

12. SCHENCH *v.* WALDESCHEF.⁴

Desceite ou une fyne fut levee en deceite etc.

Un Jon Souche⁵ et Johanne sa femme porterent lour bref de desceite vers Willem Walterschef⁶ et Johanne sa femme et un Richard etc., et counterent qe fausement et en desceite de la court leva une fyne entre W.⁷ Johane et Richard, et⁸ qe la ou il tyndrent forsque la mogté du manoir de G. ove les apportenaunces del heritage J. etc., et Johan⁹ et Johanne sa femme l'autre¹⁰ moigté et¹¹ une fyne se leva entre W. J. R. del entier a lour desheritaunce et al damage¹² etc.

Herle. N'entendoms mye qe a tiele demoustraunce devetz estre resceu, qe celui qe veot damages recoverir, yl covyent assigner cause de damages en sa demoustraunce et¹³ ceo n'ad yl mye fet. Jugement, q'il n'ad mye dit q'il fuist ousté par cele fyn n'en autre manere ne assigne pas coment il est endamagé.

¹ escrit, *C*, *Q*. ² For pas . . . fait, *subs.* qe le fet soit trié, *C*, *Q*. ³ *Add.* hic, *T*. ⁴ From *B* collated with *G* and *M*. ⁵ Suchor, *G*, de la Snithe, *M*. ⁶ Walter Waldchef, *M*. ⁷ *Ins.* et, *M*. ⁸ *Om.* et, *G*. ⁹ *Om.* et Johan, *G*, *M*. ¹⁰ *Subs.* del autre, *M*. ¹¹ *Om.* et, *G*. ¹² *sic*, *G*, *M*, demandaunt, *B*. ¹³ *Ins.* A, *M*.

And notice that, if I acknowledge a debt, even though I produce a deed in court which witnesses the payment, if the deed which I produce be denied, and I do not sue to try the deed, judgment will be given in accordance with my acknowledgment, as appears here.

Note from the Record (*continued*).

and force etc. and says that Robert can claim nothing of the debt in this behalf etc. for he says that Thomas on [25 May 1301] Thursday in Whitsun-week 29 Edw. I. at Northampton paid Robert the seven pounds, and he proffers a certain letter of acquittance under the name of Robert which witnesses that Robert received from Thomas the seven pounds in which he was bound to him for cloth delivered to him, and for which Luke his brother was jointly bound etc. of which the date is at Northampton on the aforesaid Thursday in the year aforesaid. Whereupon he asks judgment.

And Robert says that the letter ought not to prejudice him in this behalf etc., because he says that that letter is not his deed. And he asks that this may be enquired by the country and the witnesses named in the writing etc.

Therefore the sheriff is ordered by H. of STANTON, that he cause to come here on the octave of St. John the Baptist (seven named persons) and besides them twelve etc. by whom etc. and who neither etc. to make recognition etc. because as well etc.

And be it known that the writing remains in the custody of J. Bacun the king's clerk.

12. SCHENCH *v.* WALDESCHEF.¹

A case of deceit in which a fine was levied in deceit etc.

One John [Schenke] and Joan his wife brought their writ of deceit against Walter Waldschef and Joan his wife and one Richard etc. and counted that falsely and in deceit of the court a fine was levied between Walter and Joan and Richard, and that whereas Walter and Joan held a moiety only of the manor of G. with the appurtenances of the inheritance of Joan, and John and Joan his wife held the other moiety, a fine was levied between Walter and Joan and Richard of the entirety to the disinheritance of John [Schenke] and Joan, and to their damage etc.

Herle. We do not think that you ought to be received to such a demonstrance, for he who wishes to recover damages must assign the cause of the damages in his demonstrance, and this he has not done. We ask judgment, for he has not said that he was ousted by this fine, nor in any other way does he assign how he is damaged.

¹ The proper names are corrected by the record. This case appears in the Old Edition on p. 104.

Claver. Quei responez vous a la desceite ?

Herle. Nous prendrons¹ a vostre demoustraunce. Et² vous bietz recoverir damages et n'avetz pas assigné cause des damages³ etc.

Roubery. N'est ceo pas graunt damage a luy qe vous avietz levee fyne a sa desheritaunce, si issint soit, par quei vous ne poietz si legerement estourter⁴ de ceste desceite.

Herle. Seoms assouz qaunt a luy,⁵ et nous froms assetz bien a la court.⁶

Notes from the Record.

I.

Feet of Fines. Case 37, File 241, No. 42. Derbyshire.

This is the final agreement made in the court of our Lord the king at Westminster on the octave of St. Michael 4 Edw. II. before William of Bereford, Lambert of Trikingham, Hervey of Stanton, John of Benstede, and Henry le Scrop justices and other lieges then and there present. Between Walter Walteshef and Joan his wife plaintiffs and John of Stafford and Margery his wife deforciants of a messuage in Assheburn whereupon a plea of covenant was summoned between them in the same court, that is to say, that John and Margery acknowledged the messuage to be the right of Walter as that which Walter and Joan have of the gift of John and Margery, to have and to hold to Walter and Joan and the heirs of Walter of the chief lords of that fee, by the services which to that messuage pertain for ever.

13. LE DEKNE v. ST. MAUR.

I.⁷

Douwere ou tenant a terme de vie pria aide, et fuist ousté ; et celui vers qi le bref fust porté n'avoit qe terme de vie.

Une feme porta soun bref de douwere vers une Alice et Johan. Jon vient et⁸ dit q'il ne clama rien en le frauntenement qaunt a ore. Alice dit q'ele ne clama ryen en les tenemenz si noun a terme de vie del heritage mesme cestuy Johan, saunz qi nous ne poms⁹ ceux tenemenz mener en jugement ; et prioms aide de luy.

Hengham. Eide ne devietz avoir, qar vous ne¹⁰ clametz estat synoun¹¹ a terme de vie, et¹² nous ne demaundoms qe fraunc tenement issint qe

¹ pernoms, *M.* ² qe, *G* ; par quei, *M.* ³ *Om.* des damages, *M.* ⁴ excuser, *M.* ⁵ *For* luy, *subs.* la ley, *M.* ⁶ *For* froms . . . court *subs.* ferroms assez bien grace de la court, *M.* ⁷ *From B* collated with *G, M, R.* ⁸ *Om.* vient et, *M.* ⁹ *For* nous ne poms *subs.* ele ne put, *M.* ¹⁰ *Om.* ne, *R.* ¹¹ *Om.* synoun, *R.* ¹² qe, *M.*

Claver. What do you say about the deceit?

Herle. We betake ourselves to your demonstrance. You wish to recover damages and you have not assigned a cause of damages, etc.

ROUBURY, J.¹ Is it not great damage to him that you have levied a fine to his disinherittance, if so it be? Therefore you cannot so easily escape² from this deceit.

Herle. Let us be pardoned as regards him, and we will do what is sufficient for the court.

Notes from the Record (*continued*).

And furthermore John and Margery granted for themselves and the heirs of Margery, that they would warrant to Walter and Joan and the heirs of Walter, the messuage against all men for ever. And for this acknowledgment warranty fine and agreement Walter and Joan gave to John and Margery twenty pounds sterling.³

II.

De Banco Rolls, Easter, 4 Edw. II. (No. 185), r. 109d, Derby.

Walter Waldeschef in mercy for several defaults etc.

A day is given to John Schench plaintiff and the aforesaid Walter on a plea of trespass here on the quindene of St. Michael at the prayer of the parties without essoign etc.

13. LE DEKNE *v.* ST. MAUR.

I.⁴

A case of dower, in which a tenant for a term of life prayed aid, and was ousted; and he against whom the writ was brought had only a term for life.

A woman brought her writ of dower against Alice and [Edmond. Edmond] came and said that he claimed nothing in the freehold as yet. Alice said that she claimed nothing in the tenements save for the term of her life of the inheritance of this same [Edmond], without whom [she] could not bring them into judgment; and [she prayed] aid of him.

Hengham. Aid you ought not to have, for you do not claim an estate save for term of life, and we demand frank tenement only,

¹ Roubury was a justice of the King's Bench who happened to be sitting in the Common Bench for the hearing of this case.

² This appears to be another form of the word 'estordre,' see *Year Books*, 32, 33 Edw. I. (Rolls Series), p. 377. See also p. 120 above.

³ This is probably the fine mentioned

in the report; but if so, the Richard of the report takes the place of John and Margery the deforcians in the fine. It should be noticed that the latter are not defendants in the proceedings in trespass printed above.

⁴ The proper names are corrected by the record. This case appears in the Old Edition on p. 100.

vous nous poetz rendre nostre demaunde, et enterement estes de¹ nostre demaunde tenant.² Jugement si vous devetz aide avoir.

Will. Sire nous vous dyoms qe un W. baroun mesme ceste q'ore porte cestui bref et de qi douwement ele demaunde, dona les tenemenz dount ele demaunde ore douwere a R. e a mesme ceste Alice vers qi etc. [et³ a les heirs R. issi qe ceste Alice n'ad qe fraunc tenement, et Jon est le fitz R. en quei persone le fee et le dreit repose sauntz quei etc.] et prioms etc.

Hingh. Quei avietz vous qe les tenemenz furent ensi donetz ?

Will. Nous le voloms averrer.

Hing. Et nous jugement, desicome ele n'ad nule chose qe tesmoigne lour dit forsqe vent,⁴ et Alice ad conu q'ele tient a terme de vie, et nous ne demaundoms qe douwere, et ele tenant enterement de nostre demaunde, si ele doyve a ore aide avoir.

Hervi. Si Alice voilleit fere defaute⁵ etc. issint qe⁶ les tenemenz furent en point d'estre perduz et Jon vensit devaunt jugement rendu et priast⁷ etc. il serroit resceu, pur quei n'averroit ele mye adounqe ayde ?⁸

Lendemayn qaunt les justices furent avisetz ele fuist ousté del aide. Et puis fuist la paroule rehercé d'un des serjauntz,⁹ et dit fuist a *Will.* q'il deist outre.

Will. Sire nous vous dyoms qe soun baroun de qi douwement etc. ne fuist unqes seisi issint qe douwer la pout, prest etc.

Et alii econtra.

II.¹⁰

Ou eide ne fut pas granté pur ceo q'ele ne moustra rien de la taillé etc.

Une A. ke fu femme B. porta son bref de dowere vers C.

Grauntebreg. C. tient ces tenemenz a terme de sa vie del heritage Johan fiz e heir P. e prioms eide de lui.

Hervi. Pur quei ne volez vous vouchier ?

Grauntebrig. Les tenemenz furent donez a P. e ceste Clemence e a les heirs P. Jugement si aide ne devons avoir.

¹ For estes de, *subs.* l'estat, *M.* ² Om. tenant, *M.* ³ The words in brackets are supplied from *G.* They also occur in *M.* ⁴ volenté, *M.* ⁵ *Ins.* apres defaute, *M.* ⁶ For issint qe, *subs.* e, *M.* ⁷ *Ins.* d'estre resceu, *M.* ⁸ For etc. il . . . ayde, *subs.* ne serra il mie resceu. Par dieu si serra, *M.* ⁹ par un sergeaunt, *M.* de un de ces seruaunz, *R.* ¹⁰ From Y (fo. 144 r^o).

so that you can render us our demand, and you are tenant of our demand entirely. We ask judgment if you ought to have aid.

Willoughby. Sir, we tell you that one [John] the husband of her who now brings this writ, and on whose endowment she demands, gave the tenements whereof she now demands dower to Ralph and to this same Alice against whom etc. and to the heirs of Ralph; so that this Alice has frank tenement only and [Edmond] is the son of Ralph; and in his person the fee and the right repose; and without him etc. We pray aid etc.

Hengham. What have you to show that the tenements were so given?

Willoughby. We will aver it.

Hengham. Since she has nothing which witnesses her statement save her mere word, and since Alice has acknowledged that she holds for term of life, and since we only demand dower, and she is tenant of our demand entirely, we ask judgment if she ought now to have aid.

STANTON, J. If Alice wished to make default so that the tenements were on the point of being lost, and [Edmond] came before judgment was rendered, and prayed to be received, he would be received. Why then should she not have aid?

The next day when the justices were advised she was ousted from aid. Then the cause was rehearsed by one of the serjeants, and *Willoughby* was told to say something further.

Willoughby. Sir, we tell you that her husband, of whose endowment etc., was never so seised that endow her he could. Ready etc.

And the others to the contrary.

II.¹

Where aid was not granted, because the tenant showed nothing in proof of the limitation to her.

One Agnes the widow of [John] brought her writ of dower against [Alice].

Cambridge. [Alice] holds these tenements for the term of her life of the inheritance of [Edmond] the son and heir of [Ralph], and we pray aid of him.

STANTON, J. Why will you not vouch to warranty?

Cambridge. The tenements were given to [Ralph] and this [Alice] and the heirs of [Ralph]. We ask judgment if aid we ought not to have.

¹ The proper names are corrected by the record.

Claver. Vous estes mesmes partie au doun et poez vouchier le donour ou ses heirs. Jugement si vous devez de Johan aide avoir.

Scrope. Il vous dient q'il n'ount qe terme de vie e la reversion est a Johan, etc. pur quei etc.

Hervi, ad idem. Si les tenemenz fuissent en point d'estre perduz par defaute apres defaute. Johan serroit resceu a defendre sun droit. Par quei n'avera il aide ? *quasi diceret* etc.

Claver. Quei avez vous de la forme ?

Grantebreg. Bon pais.

Claver. Desicom il bient cest aide avoir par reson de la taillé, e il n'ount rien de la taillé, jugement etc.

Grant. Nous voloms averer par bon pais ; qar tut fut nostre chartre ars, ceo nous grevereit point, del houre qe nous voloms averer le doun etc., qar chartre n'est qe tesmoigne de doun ou de feffement.

Hervi a Granteb. Il vous covent dire autre chose, qar issi poet chescon homme, quant il serroit enpledé, assigner tieu feffement sanz moustrer especiauté, qe n'est pas soeffrable de lei, par quei nous agardoms qe vous diez autre chose.

Grantebrigg. Sun baroun ne fust unkes seisi issi qe dower la pout, prest etc.

Et alii contrarium.

III.¹

Une Alice porta soun bref de dowerie vers une Margerie et un J. Johan dit q'il n'ad rien ne rien ne cleyma en le fraunc tenement quant a ore.

Cant. Margerie n'ad qe fraunc tenement et le fee et le dreit repose en la persoune Johan soun fiz, saunz qi ele ne put respondre ; et prie eyde de ly.

Ing. Vous avez conu qe vous n'avez forqe fraunc tenement. Et Alice ne demaunde forqe fraunc tenement qe ne chiet pas en desheritaunse de nully. Jugement si vous devez eyde avoir.

Cant. Nous ne pooms pas vouchier qe un Richard dona lez tenemenz a T. nostre baroun et a nous et a lez heirs nostre baroun, jugement.

Ber. Avez vous rien de ceo ?

Cant. Prest etc.

¹ From *P.*

Claver. You yourself were a party to the gift and you can vouch the donor or his heirs. We ask judgment, if you ought to have aid of [Edmond].

Scrope. They tell you that they have a term for life only, and that the reversion belongs to [Edmond]. Wherefore etc.

STANTON, J. (to the same effect). If the tenements were on the point of being lost by default after default, John would be received to defend his right. Why should the tenant for life not have aid?

Claver. What have you of the form of gift?

Cambridge. We will aver it by the country.

Claver. Since they wish to have this aid by reason of the limitation, and they have nothing of the limitation, we ask judgment etc.

Cambridge. We wish to aver it by the country; Even though our charter were burnt, that would not hurt us, when we are willing to aver the gift etc.; for the charter is only evidence of the gift and the feoffment.

STANTON, J., to *Cambridge.* You must say something else; for in this way of yours every man, when impleaded, could assign such a feoffment without showing specialty, and this is not permitted by the law. Therefore we award that you say something else.

Cambridge. Her husband was never seised so that endow her he could. Ready etc.

And the others to the contrary.

III.

One [Agnes] brought her writ of dower against one [Alice] and one [Edmond]. Edmond said that he had nothing and claimed nothing in the freehold as yet.

Cambridge. [Alice] has only frank tenement, and the fee and the right repose in the person of [Edmond] her son without whom she cannot answer; and she prays aid of him.

Hengham. You have acknowledged that you have frank tenement only, and [Agnes] demands frank tenement only, which is not to the disinheritance of any one. We ask judgment if you ought to have aid.

Cambridge. We cannot vouch, for one Richard gave the tenements to [Ralph] our husband and to us, and to the heirs of our husband. Judgment.

BEREFORD, C.J. Have you anything in proof of that?

Cambridge. We are ready to aver it.

Et pur ceo qe ele n'avoit riens qe testmoigne soun dit, commaundé li fut qe ele respondreit outre.

Cant. Soun baroun ne fut unques seisi issi qe dower la pout, prest etc.

Note from the Record.

De Banco Rolls, Easter, 4 Edw. II. (No. 185), r. 92, Norfolk.

Agnes the widow of John the son of Robert le Dekne by William of Gislingham her attorney demands against Edmond the son of Ralph de St. Maur and Alice the widow of Ralph de St. Maur a moiety of three messuages sixty acres of land ten acres of meadow ten acres of pasture ten acres of wood ten acres of alders and twenty shillings of rent in Mendham ¹ as her dower etc.

And Edmond and Alice by Adam of Brom their attorney come and

14. *RUS v. EARL OF GLOUCESTER.*

I.²

Douwer ou la seconde femme porta son bref de douwer de tenemenz qe son baroun purchaca a lui e a sa primere femme en fee taillé, ou ele preist rens etc.

Une dame porta son bref de douwer etc.

Pass. Sire, nous vous dioms qe son baron etc. si purchaca mesme les tenemenz a ly e a sa primere femme a eux e ³ les heirs de lour deux corps engendrez e si etc. qe mesme les tenemenz retournassent ⁴ al donour etc. Et demaundoms jugement desicom son baroun n'avoit for une forme ⁵ taillé ove sa primere femme etc. *ut supra*, si de ceo deive dower aver.

Frisk. Tant amonte qe soun baroun ne fut unques seisi qe douwer la pout, seisi etc. prest etc.

West. Nous pledoms en leye e avoms desclos quel estat vostre baroun avoit etc. par quei vous n'avendrez mye a traverser simplement sanz respondre a ceo qe nous avoms dit, e a ⁶ ceo fu chacé de court.

Mal. Sire, nous vous dioms qe nostre baroun purchaca etc. selonc le purporte de ceste chartre—e bota avant la chartre—e demandoms jugement. Et la chartre voleit qe son baroun purchaca etc. a ly e a sa premere femme e a les heirs de lour ij corps engendrez, e pus voleit a lour heirs, e pus voleit etc. a avoir e tenir a eux e a lour heirs,

¹ Mendham is on the southern border of Norfolk.

² From *D* collated with *T*.

³ *For* a eux e, *subs.* e a, *T*.

⁴ retournerent, *T*.

⁵ ferme, *T*.

⁶ *Om.* a, *T*.

And because she had nothing which witnessed what she said, she was ordered to answer further.

Cambridge. Her husband never was seised so that endow her he could. Ready etc.

Note from the Record (*continued*).

Edmond says that he has nothing at present in the tenements, but that Alice alone holds them entirely. And Alice acknowledges this and says that Agnes ought not to have her dower thereof, because she says that John formerly her husband etc. on the day when he married her was not seised, and never afterwards was seised of the tenements as of fee so that he could endow her thereof. And of this she puts herself upon the country.

Issue is joined and a *uenire facias* awarded for the morrow of St. John the Baptist.

14. *RUS v. EARL OF GLOUCESTER.*¹

I.

A case of dower in which a second wife brought her writ of dower for tenements, which her husband bought for himself and his first wife in fee tail, and she took nothing etc.

A lady brought her writ of dower etc.

Passeley. Sir, we tell you that her husband etc. purchased the same tenements to him and his first wife, [to hold] to them and the heirs of their two bodies begotten; and if etc. that the same tenements should return to the donor etc. And seeing that her husband had only an estate tail with his first wife etc. (as above stated) we ask judgment, if of that she ought to have dower.

Friskenev. Tantamount to this, that her husband was never so seised that endow her he could. That he was seised etc. ready etc.

Westcot. We are pleading as to the law, and have disclosed what estate your husband had etc. therefore you will not arrive at traversing us simply, without answering what we have said. (And he was driven to this by the court.)

Malberthorpe. Sir, we tell you that our husband purchased etc. according to the purport of this charter; (and he produced the charter;) and we ask judgment. The charter said that her husband purchased etc. to him and his first wife and the heirs of their two bodies begotten and then said 'to their heirs,' and then said 'to have and to hold

¹ This is *Fitz. Taile*, fo. 129, No. 22.

et pus voleit qe s'ils deviassent sanz heirs de lour corps engendrez qe mesme les tenemenz retournassent al donour etc.

Scrop, justice. Vostre chartre est contrariant, qar ele voet fee taillé e pus fee pure e pus fee taillé; e pur ceo veez sur queux vous voletz demurrer.

Malm. Nous ne clamons dower avoir fors de tiel estat come nostre baroun avoit solonc le purport de cele chartre. E si vous veez qe ele soit pure, nous demandoms jugement etc.; et si taillé, nous dirroms assetz, qe ne sumes pas forclos etc. issi qe ne l'un ne l'autre ne nous forclore d'accion, par quei il nous¹ covent tailler² quel estat il avoit. Et d'autre part mesqe nous vousissoms dire q'il avoit³ fee pure e tendrissoms l'averement sur ceo vous ne le recoverez pas pur la chartre qe vous veetz etc. par quei a vous est a juger la chartre e nent a nous.

Ber. Et si nous ussoms ajuggé la chartre taillé donques eussez⁴ comencé arere⁵ a⁶ pleder, qe ne serroit pas ordre de plee; e pur ceo elisetz une de deux voies a vostre perille; e pus nous jugeroms etc.

Scrop. La premere clause voet fee taillé e la dereyne auxi avant com la reversion al donour est salvé; coment q'ele⁷ parle en mylieu de joint feffement, ceo n'est pas fors mesprison de clerk etc.

Herle. Vous dites qe ne l'un ne l'autre ne⁸ vous barre pas, donqe est l'un e l'autre auxi com en lieu⁹ peremptorie, mes a demurer sur deux peremptories vous n'avendrez mie. Et d'autre part vous avetz pris les deners etc. e devetz maintenir qe vostre baroun avoit tel estat qe vous doigne accioun a douwer demaunder, mes nous avoms moustré e dit q'il n'out etc. *ut supra*, a quei covent qe vous responez. (Et au dereyn il fut furent chacez a tenir a un de deux estaz.)¹⁰

Ber. a¹¹ *Mal*. A la comune ley dames avoient dower de cele manere de purchaz les barouns, ne ne¹² sont¹³ unqore ostez par ley especial. Jugement, etc.

Ber. dit *priuativ* qe ele ne¹⁴ emportereit point a son departir.

Pass. La volenté le donour est cele, 'quod statim post mortem uiri et mulieris' retourne au donour ou a ses heirs. Et ceux as quex le doun se fit nent issu, issi si vous fussez ore douwé etc. ceo serreit encountre sa

¹ *Om.* nous, *T.* ² dire, *T.* ³ unt, *T.* ⁴ *sic*, *T*; *Om.* eussez, *D.*

⁵ *Om.* arere, *T.* ⁶ *Ins.* nostre, *T.* ⁷ *Ins.* donqe, *T.* ⁸ *For* ne, *subs.* oye, *T.*

⁹ *Ins.* de, *T.* ¹⁰ *Add.* par *Ber.*, *T.* ¹¹ *Om.* *Ber.* a, *T.* ¹² ne, *T.* ¹³ *Ins.* pas, *T.*

¹⁴ *Om.* ne, *T.*

to them and their heirs'; and then that if they should die without heirs of their bodies begotten, the same tenements should return to the donor.

SCROPE, J. Your charter is contradictory, for it says fee tail, and then fee simple, and then fee tail; and therefore consider upon which point you will take your stand.

Malberthorpe. We do not claim to have dower except of such an estate as our husband had according to the purport of this charter. And if you think it is fee simple, we ask judgment, and if fee tail, we will say what is sufficient; for we are not excluded in such a way that either one estate or the other deprives us of our action; therefore it is necessary that you tell us what estate he had. Moreover even if we were willing to say that he had fee simple and tendered the averment upon that, you would not recover on account of the charter which you see here. Therefore it is for you to judge the charter and not for us.

BEREFORD, C.J. If we had adjudged the charter to give fee tail, you would have begun your pleading again, and that is not the order of pleading; therefore choose one of the two courses at your peril, and then we will judge etc.

Scrope. The first clause says fee tail, and the last the same, since the reversion is reserved to the donor. Although it speaks in the middle of joint feoffment, that is only an error of a clerk etc.

Herle. You say that neither one nor the other estate bars you, then each is in the place of a peremptory [exception]; but you will not arrive at taking your stand upon two peremptory exceptions. Besides you have taken the pence etc.¹ And you ought to maintain that your husband had such an estate as gives you an action to demand dower; but we have shown and said that he had not such an estate etc. (as above stated); and to this you must answer. (At last they were driven to hold to one of the two estates.)

BEREFORD, C.J., to *Malberthorpe.* At the common law ladies had dower of this kind of purchase by their husbands, nor are they yet ousted by statute. Judgment etc.

BEREFORD, C.J., said privately that she would not gain the day, when he left the court.²

Passeley. The will of the donor is that immediately after the death of the husband and wife [without issue], the land should return to the donor or his heirs. And they to whom the gift was made [have had] no issue, so if you were now endowed etc., it would be against

¹ The meaning of this expression is not clear. It may be part of a proverbial saying. See vol. i. p. 16.

² Apparently the Chief Justice took

a different view of the law from his colleagues. But the record seems to show that he changed his mind.

volenté expressement, que quidem uoluntas secundum formam doni obseruetar in omnibus. Jugement etc.

Hervi. Gardez vos jours as utaves de la Trinité. A quel iour *Malb.* rehercea le pleé, et demaunda¹ jugement.

Hervi. Pur ceo qe vous avez conu qe vostre baroun ne fut autrement seisi fors par la forme de doun fait a lui e sa primere femme *ut supra*.

II.²

Ou la seconde femme porta sun bref de dowere des tenemenz qe furent donez en fee taillé, et nichil recepit etc. ut patet etc.

Alice ke fu femme Jon le Rus porta sun bref de dowere vers G. de Clare counte de Gloucestre gardein de la terre del heir Johan le³ Rus, e demanda la terce partie du maner de C.

Herle. Accion ne puet ele avoir, car ceu maner fust doné a Johan e a Agnes sa primere femme e a les heirs de lour deus corps engendrez ; e demandoms jugement desicom sun baroun n'avoit qe fee taillé, si ele puet dowere demander.

Malm. Nostre baron seisi com de fee issi qe dowere la poet, prest etc.

Herle. Conissez ceo qe nous dioms, e seoms en jugement.

Malm. Nous enparleroms. E dit, Baron seisi issi qe dower la pout ; e veez icy la chartre qe tesmoigne le doun, qe dit qe Johan le Rus le fiz dona ceu maner a J. son pere e Agnes sa femme e a les heirs de ij corps issanz e a lour heirs, et si Agnes deviait plus tost qe Jon qe les tenemenz remeindreient a Johan e ses heirs, et si J. e A. deviaissent sanz heir de lour corps qe les tenemenz retournerent a Johan le donour e ses heirs.

Herle. Volez vous autre chose dire pur maintenir vostre accion ?

Malm. Vous veez bien par la chartre qe le doun se fist a eux e les heirs de lour corps engendrez e a lour heirs, e outre ceo dit il, si A. devie devant J. le Rus qe les tenemenz demoront a J. e ses heirs, e issi suppose il fee simple.

Ber. Quei responez vous a ceo q'il dist qe si J. e A. devient sanz heir qe les tenemenz retournerent au donour etc. ?

Malm. Sire, nous demoroms en vos avisemenz.

¹ demaundoms, *T*.

² From *Y* (fo. 143 r^o).

³ MS. 'de.'

his express will ; and this will is according to the form of the gift to be observed in all points. Judgment etc.

STANTON, J. Keep your day on the octave of Trinity.

On that day *Malberthorpe* rehearsed the plea, and asked judgment.

STANTON, J. Because you have acknowledged that your husband was not otherwise seised than by the form of the gift made to him and his first wife *as above*.¹

II.

Where a second wife brought her writ of dower to recover tenements, which were given in fee tail, and she recovered nothing, as appears etc.

[Agnes] the widow of John le Rus brought her writ of dower against Gilbert of Clare earl of Gloucester guardian of the land of the heir of John [le] Rus, and demanded the third part of the manor of C.

Herle. Action she cannot have, for this manor was given to John and Agnes his first wife, and the heirs of their two bodies begotten. Inasmuch as her husband had fee tail only, we ask judgment if she can demand dower.

Malberthorpe. Our husband was seised as of fee so that endow her he could. Ready etc.

Herle. Acknowledge what we say, and let us have judgment.

Malberthorpe. We will imparl. [He returned] and said :—The husband died so seised that endow her he could. See here the charter which witnesses the gift and says that John le Rus the son gave this manor to J. his father, and Agnes his wife, and the heirs of their two bodies issuing, and their heirs, and if Agnes died before John, that the tenements should remain to John and his heirs, and if John and Agnes died without an heir of their bodies, that the tenements should revert to John the donor and his heirs.

Herle. Will you say anything else to maintain your action ?

Malberthorpe. You see by the charter that the gift is made to them and the heirs of their bodies begotten and their heirs ; and besides this the charter says ‘ If A. die before John le Rus that the tenements shall remain to John and his heirs ’ ; and so it supposes a fee simple.

BEREFORD, C.J. What do you answer to this, that the charter says that if John and A. die without an heir, the tenements shall return to the donor etc. ?

Malberthorpe. Sir, we will abide by your opinion.

¹ This probably refers to *Malberthorpe*’s first speech.

Ber. Par la fei qe jeo dei, vous n'avez mie jugement de nous, su queu point vous devez demorir, mes veiez vous meisme ou vous volez demorer, qar nous a juger, si ceo soit fee taillé ou fee simple etc. Et si nous agardisoms qe ceo fust fee taillé e pus vous a demander si de tiel fee ne puisse dowere avoir etc.

Malm. Sire, a la commune lei en fee taillé la seconde femme avereit dowere e le baroun apres ceo q'il eust engenduré il poet aliener e le statut nel defet nent en cas de dowere, par quei nous devoms dowere avoir.

Bereford. Donc grantez vous la taillé ?

Malm. Sire, oil.

Bereford. Tendez vos jugemenz etc. in octabis sancte Trinitatis etc. Et postea in octabis sancti Martini. Ad quem diem partes uenerunt.

Frisgen. A la commune lei le baroun apres issue resuscité poet aliener e la seconde femme dowere avoir, e vous n'avez statut qe le defet. Jugement etc.

Bereford. Ou le veistes vous qe la seconde femme avereit dowere en tieu cas a la commune lei ? *quasi diceret* etc.

Herle. Si la seconde femme eust dowere en tieu cas, ceo serroit encontre la volenté le donour, qar jeo pose q'ele fust dowé e le issue qe est ore en vie fust mort sanz issue, ne rescovereit le donour vers la femme par bref en le reverti ? *quasi diceret, sic, ergo* etc.

Bereford. Les tenemenz furent donez a Johan le Rus e Agnes sa primere femme e les heirs de lour deux corps engendrez par mi queu doun la femme fust auxi avant en la taillé com Johan ; coment donqe poez vous par mi Johan qe n'avez qe demi fee taillé demander dowere de l'entier ? *quasi diceret, non.*

Inge. Jeo pose qe le count ore la voleit dowere assigner, apres qe l'eir fust de plein age il rescovereit, jeo entenke, par bref de forme de doun en le descendere en pernant son tittle auxi avant de la mere com del pere ; e par tant piert qe le pere n'avoit mie le fee entier, *ergo* etc.

Et postea Alicia non est prosecuta. Et quod nichil caperet per breue suum ; ut patet in nota proxime subsequenti etc.

BEREFORD, C.J. By the faith which I owe, you will not have judgment from us upon what point you should take your stand, but do you yourselves consider on what you will do so; for [it is not] for us to judge, if it be fee tail or fee simple etc. If we were to award that it is fee tail, then you would demand if of such a fee she cannot have dower.¹

Malberthorpe. Sir, at the common law in a case of fee tail the second wife would have dower, and the husband after issue begotten could alienate, and the statute does not defeat her right in the case of dower. Wherefore we ought to have dower.

BEREFORD, C.J. Then you grant the tail?

Malberthorpe. Yés, Sir.

BEREFORD, C.J. Await your judgment till the octave of Trinity etc. (Afterwards they were adjourned till the octave of St. Martin. At that day the parties came.)

Friskenev. At the common law the husband after issue born can alienate, and the second wife can have dower. You have no statute which defeats her right. Judgment etc.

BEREFORD, C.J. Where have you seen the second wife have dower in such a case at the common law? Nowhere, I think.

Herle. If the second wife had dower in such a case, it would be against the will of the donor; for suppose she were endowed and the issue now living were to die without issue, would not the donor recover the whole against the wife by a writ in the reverter? Surely he would. Therefore etc.

BEREFORD, C.J. The tenements were given to John le Rus and Agnes his first wife and the heirs of their two bodies begotten, by which gift the wife was as much in the limitation as John. How can you then through John demand dower of the entirety, for you have only half a fee tail? Surely, you cannot.

Hengham. Suppose that the earl² were now willing to assign dower to her; as soon as the heir was of full age he would, I think, recover by a writ of formedon in the descender, taking his title as much from the mother as from the father; and by that it appears that the father had not the entire fee, therefore etc.

Afterwards Alice did not sue; and it was adjudged that she take nothing by her writ as appears in the note next following.³

¹ The correct translation is doubtful. The passage should be compared with the speeches in the other reports.

² It will be remembered that the earl was the heir's guardian.

³ This refers to a note of a case heard in Michaelmas term, 5 Edw. II.

III.¹

Juliane de A. porta bref de dower vers un E. Et le cas fut tiel. Les tenemenz furent donez a un Robert, de qⁱ dowement ele demaunda, et a Alice sa premiere femme et a les heirs de leur deux corps engendrez. Alice devia. R. prist autre femme, mesme cesti qe porte ore bref de dower. Robert devia. Juliane porte son bref de dower.

Herle dit le cas, et demaunda jugement, si ele deit dower avoir.

Malb. Son baroun en out fee en les tenemenz issint qe la pout dower, et prest etc.

Herle. Nous avoms conu un fet² qe vous ne doune accioun de dower, dont il vous covent dire quel fee son baroun avoit ou fee taillé ou fee simple.

Herle: Le un qe⁴ nous vous avoms conu.

Malb. N'est pas a nous a pleder l'estat nostre baroun, mes assez nous suffyt de averrer nostre bref *scil.* qe nostre baroun avoit fee, issint qe dower nous pout. Et pus mist avant chartre en court qe fut tiel del donour etc. a avoir et tenir a Robert et a Alice et a les heirs de leur deux corps engendrez et a leur heirs, et si Alice devie vivaunt Robert qe les tenemenz demurassent a Robert et a ses heirs etc.

Hamton. La dame ne put estre partie a cesti chartre fet a son baroun, ne vous ne poiez estre partie a graunter ne a dedire, qe de ambeperys vous estes tut estrange.

Ber. Vous dites qe vostre baroun avoit fee, et a vous ount conu un maner de fee, *scil* fee taillé dont a vous covent dire quele manoir de fee il avoit ou taillé ou simple, dont si vous dites fee taillé donqe ne averez vous pas dower.

Malm. Nous avoms mis avant la chartre qe tesmoigne l'estat nostre baroun, la ou vous estes a juger s'il avoit tiel estat qe dower nous pout ou noun.

Ber. Vous dites talent, mes est a vous a moustrer l'estat vostre baroun de qⁱ estat vous biez de dower aver, et pus sur cel estat en temoignance de cel estat mettre avant une chartre en prove de vostre dit. Et ceo est forme de pleder.

Malb. Nous avoms mis avant la chartre *ut supra*; en voz descrescioun seït etc. *ut supra*.

Ber. Volez qe nous devons trier l'estat vostre baroun le quel il

¹ From *M.* ² The word 'fet' seems to be an error for 'fee.' Malberthorpe had not yet produced his charter.

³ It is probable that the word '*Herle*' is inserted in error; and that some such words as 'Nous dioms q'il avoit' have been omitted.

⁴ This word is omitted in the MS.

III.¹

[Agnes the widow of John le Rus] brought a writ of dower against one [Gilbert] and the case was this. The tenements were given to one [John] on whose endowment she demanded [dower], and to [Agnes] his first wife and the heirs of their two bodies begotten. [Agnes] died; [John] took another wife, this same [Agnes] who now brings a writ of dower. [John] died, and [Agnes] brought her writ of dower.

Herle stated the case, and asked judgment if she ought to have dower.

Malberthorpe. Her husband had fee in the tenements so that he could endow her; and this we are ready etc.

Herle. We have acknowledged [a fee] which does not give you an action of dower; and therefore you must say what fee her husband had, fee tail or fee simple. [We say that he had] the fee which we have acknowledged.

Malberthorpe. It is not for us to plead the estate of her husband. It is sufficient for us to aver our writ, that is to say, that our husband had a fee so that he could endow us. Then he produced a charter in court, which was as follows, to have and to hold of the donor etc. to [John] and [Agnes] and the heirs of their two bodies begotten, and their heirs, and that if [Agnes] die in the lifetime of [John] the tenements should remain to [John] and his heirs etc.

Hamton. The lady cannot be a party to this charter made to her husband, nor can you be a party to grant or to deny it, for in both cases you are altogether a stranger.

BEREFORD, C.J. You say that your husband had a fee, and they have acknowledged to you one sort of fee, that is to say fee tail. Therefore it is for you to say what kind of fee he had, fee tail or fee simple. If you say fee tail you will not have dower.

Malberthorpe. We have put forward the charter, which witnesses the estate of our husband. It is for you to judge whether he had such an estate that he could or could not endow us.

BEREFORD, C.J. You are wrong. It is for you to show your husband's estate, from which you wish to have dower, and then on that estate and in witness of it to put forward a charter in proof of your statement. That is the form of the pleading.

Malberthorpe. We have put forward the charter (as above stated); let it be for you to decide etc. (as above stated).

BEREFORD, C.J. You wish that we should try the estate of your

¹ The proper names are corrected by the record.

avoit fee taillé ou fee simple, et pus juger si ele deit dowere avoir ou noun; par fey, nous ne froms pas, mes dites quel estat vostre baroun avoit, et sur ceo demorrez en jugement, qe bien savoms q'il covent ore fere, qe nous ne dorroms deux jugementz sur un mesme chose solonc ceo qe vous voudrez etc.

Ber. ne put chacer *Malb.* en nul maner a dire quel estat son baroun avoit, mes touz jours voillez demurrer en lour jugement en dreit de ceo.

A l'autre jour il granta q'il avoit fee taillé. Et vous dioms q'il pout avoir aliené vendu et doné *per auctoritatem* de la chartre a un estraunge e adonqe pout la femme aver ew dowere quant a l'estrange, et par statut n'est ele pas ousté de dowere. Et demaunda jugement.

Herle. Les paroles de l'estatut lui ouste del dowere.

IV.¹

Une femme porta soun bref de dowere; e fut le cas tel, qe soun baroun e sa femme primere purchaserent lez tenemenz a eux e a lour heirs de lour ij corps engendrez par une chartre qe fut de tele forme, a A. e B. sa femme 'et heredibus de corporibus ipsorum A. et B. exeuntibus.' E pus voleit, 'heredibus et assignatis,' issint qe cele chartre content fee taillé e fee symple; e a la fyn de la chartre reserva la reversioun al doneour.

Herle. Sire, nous vous dioms qe soun baroun ne fut unqes seisi issi qe dower la pout, qe lez tenemenz furent donez al baroun e sa primere femme *ut supra*, issi qe n'entendoms pas qe de cel estat dower la pout.

Malm. Veyez ici la chartre e la forme del feffement la quele suppose fee symple, jugement.

Ber. La chartre veut ij contraries *scilicet*, fee taillé, e fee symple, e pur ceo si vous volez estre eydé, ditz nous quel estat vostre baroun avoit.

Malm. Nous avoms mys avaunt cele chartre e dioms qe l'estat qe nostre baroun avoit fut solum le purport de cele chartre. Jugement si de tel estat etc.

Ber. Manere de pleder est a dire issint, 'tel estat clamouns e veyez cy le fet qe ceo testmoigne,' e noun pas mettre avaunt fet e dire 'nous clamouns par cel fet etc.' e lesser la court juger le fet, qe si nous

¹ From *P.*

husband whether he had fee tail or fee simple; and then to judge if she ought to have dower or not. By faith, we will not do it, but do you say what estate your husband had, and on that abide your judgment; for we know well what we must do now; we will not give two judgments upon one and the same matter according as you wish etc.

BEREFORD, C.J., could in no wise drive *Malberthorpe* to say what estate the lady's husband had; but he always wished to abide the judgment of the court with regard to that.

On another day he granted that the husband had fee tail; [and said:—]We tell you that he could have alienated sold and given by authority of the charter to a stranger, and then the wife could have had dower against the stranger, and by statute she is not ousted from her dower. We ask judgment.

Herle. The words of the statute oust her from the dower.

IV.

A woman brought her writ of dower, and the case was this. Her husband and his first wife purchased the tenements to them and the heirs of their two bodies begotten by a charter of this form, 'to A. and B. his wife and the heirs of the bodies of A. and B. issuing'; and then it said 'to the heirs and assigns,' so that the charter contained fee tail and fee simple; and the end of the charter reserved the reversion to the donor.

Herle. Sir, we tell you that her husband was never so seised that he could endow her, for the tenements were given to the husband and his first wife as above stated; and so we do not think that he could endow her from that estate.

Malberthorpe. See here the charter, and the form of the feoffment which supposes fee simple. Judgment.

BEREFORD, C.J. The charter declares two opposite things, fee tail and fee simple. Therefore if you wish to be aided, tell us what estate your husband had.

Malberthorpe. We have put forward this charter, and we say that the estate which our husband had was according to the purport of this charter. We ask judgment if of such an estate we ought not to have dower.

BEREFORD, C.J. The way to plead is to say thus: 'we claim such and such an estate, and see here the deed which witnesses it'; and not to put forward the deed and say 'we claim by this deed,' and leave the

juggassoms le fet pur fee taillé unqore demaunderez vous dowere cum de fee symple. E si nous juggassoms le fet pur fee symple unqore demaunderez vous dowere de fee taillé. E pur ceo ditz nous quel estat vostre baroun avoit.

Puis se tynt en fee taillé e demura en jugement.

Note from the Record.

De Banco Rolls, Easter, 4 Edw. II. (No. 185), r. 36d, Essex.

Agnes, the widow of John le Rus, by Robert of Hales her attorney demands against Gilbert of Clare earl of Gloucester and Hertford the guardian of the land of John the son and heir of John le Rus the younger the third part of the manor of Nortone Maundevill¹ as her dower etc.

And Gilbert by Adam of Brom his guardian comes and says that Agnes ought not to have her dower thereof, because he says that John sometime the husband etc. and one Agnes the first wife of John purchased the manor whereof etc. from one John le Rus of Felstede, to hold to John le Rus sometime the husband etc. and Agnes his first wife and the heirs of the bodies of John and Agnes issuing etc. and if without such heirs they should die, the manor with its appurtenances etc. should fully revert to John le Rus of Felstede etc. Whereupon he asks judgment, if the action of dower in this case can avail Agnes now the demandant the second wife etc.

And Agnes well acknowledges that John sometime the husband etc. and Agnes the first wife etc. purchased the manor whereof etc. to hold to them and their heirs of their bodies issuing etc. in form aforesaid etc.; but she

15. BURY *v.* CAMBRIDGE.²

Ou apres garant voucher, resorti a novel response.

Nota qe en un bref de dowere le tenant voucha a garant e avoit jour a la quinezeine de Seint Hillarie, a queu jour le garant se fist essonier, e avoit jour a iij semeines de Pasche.

A queu jour *Hunt.* pur le tenant :—A. qe demande ceste dowere, ele se lessa marier a un Bernard Begger pus cestui bref purchacé. E demandoms jugement du bref.

Assch. A ceo ne avendrez mie, qar vous avez vouché a garant un Johan de C. e issi mis vostre response en autri bouche q'est ore venuz cienz par summons qe prest est de garanter e rendre a nous nostre dowere. Jugement si al abatement de nostre bref devez estre resceu.

¹ Norton Mandeville lies eight miles west of Chelmsford. ² From Y (fo. 143 v°).

court to judge it; for if we adjudged the deed to give a fee tail, you would still demand your dower as from the fee simple, and if we adjudged it to give a fee simple, you would still demand dower from the fee tail. Therefore tell us what estate your husband had.

Then they held to the fee tail, and awaited judgment.

Note from the Record (*continued*).

says that this ought not to stand against her etc., for she says that before the statute *de donis condicionalibus* was proclaimed such feoffees etc., after issue born had power of alienating the tenements so given to them etc. and by the same statute the second wife of such a husband so jointly enfeoffed etc. is not precluded from an action of dower concerning such tenements etc. Whereupon she asks judgment etc. And upon this a day is given them here on the octave of the Holy Trinity in the same state as now etc. at the prayer of the parties, saving to the parties their arguments (*rationibus*) on either side etc.

At that day the parties came by their attorneys and a day is given to them for hearing their judgment thereof here on the octave of St. Michael, in the same state as now saving to the parties their arguments etc. At that day the parties came by their attorneys etc. and a day is given them for hearing their judgment here on the octave of St. Martin saving to the parties etc. on the ground that judgment has not yet etc. Afterwards at that day Gilbert came by Adam of Brom his guardian and offered himself the fourth day against Agnes: and she did not come and she was demandant etc. Therefore it is awarded that Gilbert go thereof without day, and Agnes and her pledges of prosecuting be in mercy etc. Let the names of the pledges be sought.

15. BURY *v.* CAMBRIDGE.

A case in which the tenant after vouching to warranty resorted to a new answer.

In a writ of dower the tenant vouched to warranty and had for a day the quindene of St. Hilary. At that day the warrant caused himself to be essoigned, and he had for a day three weeks from Easter. At that day,

Huntingdon (for the tenant). A. who demands this dower was married to one Bernard Begger, after this writ was purchased. We ask judgment of the writ.

Assheley. To that you will not come, for you have vouched to warranty one John of C., and so have put your reply in the mouth of another, who has now come here by summons and is ready to warrant, and render us our dower. We ask judgment if you ought to be received in abatement of our writ.

Bereford. Ne voet il resortir de son voucher e a vous respondre pur li meme? Jeo crei qe ceo est avantage pur vous a aunterrer¹ sa terre encountre vostre bref.

Hervi. Ou fust ele esposé e quant?

Huntingdon. A Suthamton en la eglise de la Croice tieu jour etc.; e prest del averer.

Assh. qe ele ne ala unkes hors de la vile de Loundres pus la mort son baroun, prest etc.

Hervi. Suyez bref de fere venir bon pays de Suthamton etc.

Note from the Record.

De Banco Folls, Easter, 4 Edw. II. (No. 185), r. 61, London.

Margaret, the widow of Robert of Bury, heretofore in the hustings of London, demanded against John of Cambridge the third part of three mesuages and six shops in London as her dower etc., by the endowment of Robert, sometime her husband etc. And John in the same hustings vouched to warranty thereof, John the son and heir of Robert of Bury, as a foreigner to be summoned in the counties of Norfolk and Suffolk, by which voucher the cause was adjourned (*atterminata*) here on the octave of St. Michael last past, so that process thereon being continued until this day, that is to say, on the quindene of Easter now come as well Margaret as John of Cambridge by William of Wood, his attorney. And John says that he

16. ANON.²

Ou le gardein voucha a garant en plai de dowere enfant en altre garde esteant.

A. ke fu femme M. porta son bref de dowere vers B. gardein de la terre e del heir D. B. vient en court, voucha a garant pur le heir en sa garde esteant P. fiz e heir M. en la garde F.

Hengham. Jugement de ceo voucher gardein. Coment q'il soit vouché il ne puet nent voucher.

Hervi a Mugg. Ou avez vous veu gardein voucher en bref de dowere?

Mugg. Sire, au terme de la Trinité prochein passé, de quei jeo vouche recorde.

Hervi. Si vous le trovez jeo vous dorra mon chaperon.

Et postea *Ber* superuenit et *Hervi* repeciit vocare predictam.

¹ The true reading of this word is doubtful. The two letters in italics are represented by a mark of contraction in the MS.

² From *Y* (fo. 143 v^o).

BEREFORD, C.J. Does he not wish to resort from his voucher, and to answer you for himself? I think that it is an advantage for you for him to risk¹ his land against your writ.

STANTON, J. Where was he married and when?

Huntingdon. At Southampton in the Church of the Holy Cross on such and such a day; and ready are we to aver it.

Assheley. She never went out of the town of London after the death of her husband. Ready etc.

STANTON, J. Sue a writ to make a jury come from Southampton.

Note from the Record (*continued*).

ought not to answer Margaret thereof, because he says, while the cause was pending in court here, Margaret married one Bernard Beggere of Gascony, vintner, at the town of Southampton in the church of the Holy Cross of the same town; and he is ready to aver. Whereupon he asks judgment etc.

And Margaret says that she has not any husband, but is sole, and free from all conjugal union (*copula*); and she asks that this may be enquired by a jury; and John likewise. Therefore the sheriff of Southampton is ordered to cause to come here on the quindene of Trinity, at the prayer of the parties, twelve etc. by whom etc. and who neither etc. to make recognition; because as well etc.

16. ANON.

A case in which a guardian vouched to warranty in a plea of dower an infant who was in the ward of another.

A. the widow of M. brought her writ of dower against B. guardian of the land and heir of D. B. came into court and vouched to warranty for the heir who was in his ward P. the son and heir of M. who was in the ward of F.

Hengham. We ask judgment of this voucher of a guardian, who although he may be vouched cannot vouch.

STANTON, J. to *Miggeley.* Where have you seen a guardian vouch on a writ of dower?

Miggeley. Sir, in Trinity term last past, and of that I vouch the record.

STANTON, J. If you find it, I will give you my hood.

Afterwards BEREFORD, C.J., came into court, and STANTON, J., rehearsed the voucher aforesaid.

¹ See note 1 opposite. The translation assumes that the word 'aunturrer' stands for 'aventurer.'

Bereford a *Mugg*. Coment le vouchez vous e par quele reson ?

Mugg. Sire, nous dioms qe M. fu seisi de ces tenemenz dont A. qe fu la femme M. demande dowere, qe hors de sa seisine enfeffe D. pere l'enfant en nostre garde esteant par ceste chartre qe voet garantir. Et demandoms jugement si le voucher ne soit assez bon.

Hengham. Gardein ne puet nent voucher en ceo cas de dowere, car si cele chartre fust dedite ne l'un ne l'autre ne poeit estre partie, e demandoms jugement de ceo voucher.

Bereford. Jeo n'a mie veu qe le feffé serroit chargé pur le feffour, ergo ne l'eir le feffé pur l'eir le feffour.

Bereford. Volez vous autre chose ?

Bereford irascitur, dixit :—Quidez vous *Johan Hengham* a rioter ceste court en ceo plee com vous le avez en le plee Cristiane qe fu femme *Johan* le Chalunner ? Par saint Jake vous noun friez.

Hervi a *Hengham*. Ceo voucher est en noun l'enfant e pur l'enfant.

Hengham. Estoise le voucher.

17. MARUM v. LE CLERK.¹

Un Willem porta son *cui in uita* vers Geffrey de C. et dit qe Maud la Sue par noun fut seisi etc. de Maud descendi a Johan etc. et de Johan a Willem qe ore demaunde et en les queux mesme cely n'ad entré si noun par Richard baroun l'avant dite Maud a qi ele en sa vie contredire etc.

Hing. Sire, a la commune ley le heir la femme n'avoit autre recoverir forsqe bref de dreit et ceo est doné par statut de Gloucestre remedie al heir la femme par bref d'entré, *scil.* le *cui in uita* par la mort son pere et sa miere. Mes ore ne portez cesti bref de la seisine sa miere, mes de la seisine sa ael, dont statut n'est mye garraunt a cesti bref.

Pass. Dit, 'eit le heir la femme apres la mort son pere e sa miere etc.' et vous ne poiez dedire q'il n'est heir, par quei assez est l'estatut garraunt a cesti bref. Jugement si le bref ne gist.

Hunt. Vous dites bien si l'estatut deit apres la mort l'aele eit le heir son recoverir, mes il ne dit pas issi, einz dit apres la mort le pere et

¹ From *M*.

BEREFORD, C.J., to *Miggeley*. How do you vouch him and for what reason ?

Miggeley. Sir, we say that M. was seised of these tenements, of which A. the widow of M. demands dower, and M. out of his seisin enfeoffed D. the father of the infant who is in our ward by this charter, which speaks of warranty. We ask judgment if the voucher be not sufficiently good.

Hengham. A guardian cannot vouch in this case of dower, for if this charter were denied neither voucher nor vouchee could be a party. We ask judgment of this voucher.

BEREFORD, C.J. I have not seen the feoffee charged for the feoffor, therefore the heir of the feoffee should not be charged for the heir of the feoffor.

BEREFORD, C.J. Will you say anything else ?

BEREFORD, C.J., enraged, said :—Do you think, John Hengham, to embarrass the court in this plea as you embarrassed it in the case¹ of Christian the widow of John le Chalunner ? By St. James ! you will not do so.

STANTON, J. to *Hengham*. This voucher is in the name of the infant and on behalf of the infant.

Hengham. Let the voucher stand.

17. MARUM *v.* LE CLERK.

One William brought his *cui in uita* against Geoffrey de C. and said that one Maud la Sue by name was seised etc. ; from Maud descended etc. to John and from John to William, who now demands and into which this same Geoffrey had not entry unless by Richard the husband of the said Maud, whom she in his lifetime could not gainsay etc.

Hengham. Sir, at the common law the heir of the wife had no other recovery save by a writ of right, and [for] this a remedy is given for the heir of the wife by the statute of Gloucester by a writ of entry,² to wit the *cui in uita* on the death of his father and his mother. But now you are not bringing this writ on the seisin of his mother, but on the seisin of his grandmother ; therefore, the statute is not a warrant for this writ.

Passeley. The statute says 'let the heir of the woman have after the death of his father and mother, etc.' ; and you cannot deny that he is the heir. Therefore the statute is a sufficient warrant for this writ. We ask judgment if the writ does not lie.

Huntingdon. You would be right, if the statute said 'after the death of the grandmother let the heir have his recovery' ; but it does

¹ See p. 18 above.

² Stat. Glouc. 6 Edw. II. c. 3.

la miere eit etc. en supposaut qe le premer issue la miere avera cesti bref etc. Jugement si rien pussez demaunder etc.

Note from the Record.

De Eanco Rolls, Easter, 4 Edw. II. (No. 185), r. 131d, Lincoln.

Robert, the son of Samuel of Marum, and Osbert the brother of the same Robert by their attorney, demand against Richard le Clerk of Gayton, and Alice his wife, one messuage in Marum¹ as their right and inheritance, and into which Richard and Alice have not entry unless after the lease, which Robert the son of Bartholomew, sometime the husband of Sarah the daughter of Richard, the grandmother of Robert and Osbert, whose heirs they are, whom Sarah in his lifetime could not gainsay, made to William Ack chaplain etc.

18. MARUM *v.* MARKEBY.

I.²

Cui in uita post dimissionem en les queux il n'ad entré si noun pus le lees qe un R. jadis baroun S. cosygne mesme cesti Johan qi heir il est de ceo en fit etc. a qi ele en sa vie countredire ne pout.

Lamf. Sire nous vous dioms qe Sarre apres la mort son baroun fut seisi et aliena, prest etc.

[*Kyng.*] La ou il suppose par son bref qe vous n'avez entré si noun etc. a qi etc. ele countredire ne pout, a dire q'ele mesme fut seisi apres la mort son baroun et aliena, et qe pout [estre] q'ele entra avant, qe celi qe fut issint disseisi pout recoverir par assise de torcenouse entré q'est defessable, ne barre poynt a la femme tut fut ele en pleine vie, ne cel nent plus q'ore demande par my la femme, par quei il vous covent respoudre outre.

Kyng. Vous ne responez nent ; et ceo vous prove jeo, qe put bien ensemble estre, ceo qe nous usoms pur accioun et ceo qe vous usez pur respounse pout ensemble estre, *ergo* nent resceivable ; q'il pout ensemble estre jeo vous prove ; ceo qe nous usoms pur accioun est qe vous n'avez entré si noun *ut supra*, et ceo qe vous usez pur response, q'ele fut seisi apres la mort son baroun et aliena. Et bien put ensemble estre, qe le baroun aliena, q'ele fut pus seisi par ascun torcenouse entré qe fut defessable, la quele seisine ne luy barre poynt ne son heir. Par quei par voz response ne pernez nent.

¹ Mareham le Fen and Mareham on the Hill are near Horncastle.

² From *M.*

not say so. It does say 'after the death of the father and the mother, let him have etc.,' and so supposes that the first issue of the mother will have this writ. Judgment if you can demand anything etc.

Note from the Record (*continued*).

And Richard and Alice by Walter of Thymelby, their attorney, come and defend their right; and well they deny that Robert, sometime the husband, leased the messuage to William as Robert and Osbert by their writ suppose; and of this they put themselves upon the country.

Issue is joined and a *uenire facias* awarded here for a month after Michaelmas.

18. MARUM *v.* MARKEYB.

I.

Entry *cui in uita post dimissionem* in which the tenant has not entry unless after the lease, which one R., lately the husband of Sarah the cousin of this same John whose heir he is, made thereof etc., which R. she could not in his lifetime gainsay etc.

Laufare. Sir, we tell you that Sarah after the death of her husband was seised and alienated. Ready etc.

[*Kingeshemed.*¹] Whereas [we] suppose by [our] writ that you have not entry unless etc. whom etc. she could not gainsay, your statement that she was seised after the death of her husband and alienated—[since] it might be that she entered, and he who was thus disseised, could have recovered by an assize on the wrongful entry, which is defeasible,—is no bar to the woman even though she were alive nor is it to him who now demands through the woman. Wherefore you must make further answer.

Kingeshemed. You do not answer. I will prove to you that two things may stand together, namely, that which we use for action, and that which you use for answer, therefore your answer ought not to be received; I will prove to you that they can stand together; what we are using for action is that you have not entry unless (as above stated), and what you are using for answer is that she was seised after the death of her husband and alienated. And these can well stand together, for the husband alienated and she was afterwards seised by some wrongful entry which was defeasible, and this seisin is no bar either to her, or to her heir. Therefore by your answer you take nothing.

¹ The name of the speaker is omitted in the MS.

Et pus *Lamf.* fat chacé a respoundre outre, s'il quida bien fere. Et pus dit il qe le baroun ne lessa pas prest etc.

Et alii eontra.

II.¹

Un A. porta le *cui in uita* vers un C. e dit qil n'avoit entré si noun par B. jadis soun baroun a qi ele etc.

Lanf. Ele fut seisi pus le temps soun baroun. Jugement si ele pusse ceti bref user.

Pass. Coment seisi?

Lanf. A ceo n'avoms mester à dire, qe assez nous suffit qe vous futes seisi, jugement.

Hervy. Il covent dire coment seisi, qe put estre q'apres le deces soun baroun q'ele disseisi C. e qe C. ust recovery puis vers la femme par assise, e issint la seisine defete.

Lamford. Soun baroun ne lessa point, prest etc.

Et alii eontra.

Note from the Record.

De Banco Rolls, Easter, 1 Edw. II. (No. 185), r. 131d, Lincoln.

Robert, the son of Samuel of Marum, and Osbert the brother of the same Robert, by their attorney, demand against William of Markeby and Sarah his wife, one acre and three roods of land, and a third part of one messuage in Marum,² as their right and inheritance, and into which William and Sarah have not entry unless after the lease, which Geoffrey of Leek, sometime the husband of Odierne, the daughter of Richard the son of Ives, the kinswoman of Robert and Osbert, whose heirs they are, whom the

19. HASELHOLT v. HASELHOLT.

I.³

De forma doni en le *reuerti*, ou le tenant allegea un recoverir par assise de novele disseisin, ou le revers de ceo qe cesti bref suppose fut trové par verdit d'assise. E le demandant fu chacé a respondre a ceo la etc.

Un Johan porta son bref de forme de doun en le *reuerti* etc. e conta de sa seisine demene etc. e⁴ dona a William son frere e a les heirs de

¹ From *P.* ² Mareham le Fen and Mareham on the Hill are near Horncastle.

³ From *D* collated with *C*, *Q*, *T*.

⁴ *Ins.* dit q'il, *T*.

Then *Laufare* was driven to make further answer if he thought well to do so. Then he said that the husband did not lease, ready etc.

And the others to the contrary.

II.

One A. brought the *cui in uita* against one C. and said that C. had not entry save by B. lately her husband whom etc.

Laufare. She was seised after her husband's days. We ask judgment if she can use this writ.

Passeley. How seised ?

Laufare. To that we have no need to answer, for it is enough for us that you were seised. We ask judgment.

STANTON, J. You must say how seised, for it might be that after the death of her husband she disseised C. and that C. had recovered against her afterwards etc. by the assize and that so her seisin was defeated.

Laufare. Her husband did not lease, ready etc.

And the others to the contrary.

Note from the Record (*continued*).

aforesaid Odierne in his lifetime could not gainsay, made thereof to Robert the son of Bartholomew of Marum etc.

And William and Sarah by Walter of Thymelby their attorney come and defend their right when etc. and well they deny that Geoffrey, sometime the husband, etc. demised the tenements to Robert the son of Bartholomew, as Robert and Osbert by their writ suppose, and of this they put themselves upon the country.

Issue is joined and a *uenire facias* awarded here for a month after Michaelmas.

19. HASELHOLT *v.* HASELHOLT.¹

I.

A writ of formedon in the reverter. The tenant alleged a recovery by an assize of novel disseisin, on which the reverse of that which this writ supposed was found by verdict of the assize. The demandant was driven to answer this, whereupon etc.

One [William] brought his writ of formedon in the reverter etc. and counted of his own seisin, and [said that] he gave the tenement to [John] his brother and the heirs of [John's] body begotten, and

¹ Proper names are corrected by the record.

son corps engendreez etc. e les quex deivent a lui revertir pur ceo qe l'avandit W. murust sanz heir etc.¹

Botill. Sire, a cesti bref ne deit il estre respondu. E² vous dioms qe Alice vers qi il porte cest bref avant ceste hure si³ porta il⁴ vers mesme cesti Johan une assise⁵ de novele disseisine e mist en sa plainte e en vewe des jurours⁶ mesme les tenemenz qe Johan ore demande devant Monsieur Johan de Mutford etc.; ou mesme celui Johan adonques respondi com tenant e dit q'il avoit doné etc. a W. son frere e as heirs de son corps engendrez le quel W. n'avoit pas de⁷ issu; e dit qe⁸ pur ce qe W. nous enfeffa de mesme les tènementz en fee, le quel W. n'avoit qe fee taillé,⁹ le quel feffement si fut en sa desheritance issi q'il entra freschement¹⁰ com ly list bien a faire; ou mesme ceste Alice dit qe W. fut feffé en fee, e¹¹ sur quel point il furent a issue¹² etc. ou trové fut par verdit d'assise qe vous avetz doné les tenemenz en fee¹³ par ou¹⁴ fut agardé qe nous recoveroms nostre seisine. E desicom trové fut devant justices qe porteront recorde le reverse de vostre accion la quele vous usez ore e par quel jugement nous sumes ore¹⁵ seisi e¹⁶ quel jugement unqore esta en sa force, jugement si a nule accion fondu sur la forme taillé a William e la quele forme fut esteint pur nul¹⁷ devez estre respondu.

Wilb. Homme qe moi¹⁸ reboter par reson de un recoverir¹⁹ en court, einz ceo qe son response soit²⁰ plener il covent²¹ qe cel response²² trenche si haut com mon accion sur quei mon bref est conceu. Et del hure qe le recoverir q'il allege, qe nous ne grantoms pas, ne trie²³ fors tansoulement le franc tenement, n'entendoms my²⁴ qe par nul tiel recoverir²⁵ de cesti bref de forme de doun q'est en le dreit²⁶ nous puisse reboter.²⁷

Ber. Cesti bref n'est pas en le dreit fondé einz a demander une reversion etc., issi qe le dreit²⁸ tout temps lui demurra; mes par Saint Piers s'il fu lens²⁹ etc. donke serroit en son dreit. Et d'autrepart ne purreit il user son bref de dreit en ceo cas e tendre sute e dereisne? *quasi diceret, Sic.*³⁰

¹ Om. etc., e dona . . . etc., C, Q. ² Subs. qe, C, T, qar, Q. ³ Om. si, C, Q.
⁴ Om. il, C, Q. ⁵ bref, C, Q. ⁶ Om. des jurours, C, Q. ⁷ Om. de, T;
For pas de, subs. nul, C, Q. ⁸ Om. qe, C, Q. ⁹ *For* nous enfeffa . . . taillé, subs.
 enfeffa une Alice en fee simple, C, Q. ¹⁰ *Ins.* apres sa mort, C, Q. ¹¹ Om. e, C, Q.
¹² l'assise, C, Q, T. ¹³ *Ins.* simple, C, Q. ¹⁴ unt, T; quei, C, Q. ¹⁵ Om.
 sumes ore, D. ¹⁶ Om. la quele . . . seisi e, C, Q. ¹⁷ Om. nule . . . nul; *Ins.*
 cesti bref, C, Q. ¹⁸ Subs. ne voet, T. ¹⁹ *For* Homme . . . recoverir, subs.
 qe me veot barrer et reboter de accioun, C, *Sim.* Q. ²⁰ *Ins.* si, C, Q. ²¹ Om.
 il covent, *Ins.* issi, C, Q. ²² *sic*, C, Q, recoverir, D, T. ²³ Om. ne trie, C, Q.
²⁴ mye, T. ²⁵ respounse, C, Q. ²⁶ Om. de forme . . . dreit, C, Q. ²⁷ oster,
 C, Q. ²⁸ Om. issi qe le dreit, C, Q. ²⁹ S'il fut eynz, C, Q; s'il sywe les, T.
³⁰ Om. etc. donqe . . . Sic, C, Q.

that they ought to revert to him, because the aforesaid [John] died without an heir of his body etc.

Botiller. Sir, on this writ he ought not to be answered. We tell you that [Ellen] against whom he brings this writ heretofore brought against this same [William] an assize of novel disseisin before [Sir William de Mortemer etc.] and put in her plaint and in the view of the jurors the same tenements which [William] now demands. Then this same [William] answered as tenant and said that he had given them etc. to [John] his brother and the heirs of his body begotten, and this [John] had no issue. And he said that, because [John] enfeoffed us of the same tenements in fee, when he had fee tail only, which feoffment was to his disinheritance, he entered forthwith after [John's] death as it was lawful for him to do. And [Ellen] said that [John] was enfeoffed in fee [simple]; and upon that point they were at the assize, and it was found by verdict that you had given the tenements in fee simple; and thereupon it was awarded that we should recover our seisin. And since the reverse of your action which you now use was brought before justices, who bore record, and by their judgment we are now seised, and since their judgment is still in force, we ask judgment if you ought to be answered on any action founded upon the form limited to [John] which was annulled.

Willoughby. If a man wish to rebut me by reason of a recovery in court, in order that his answer may be complete, his recovery must be as high as my action upon which my writ is conceived. And since the recovery which he alleges (but which we do not grant) tried the frank tenement¹ only, we do not think that by any such recovery he can rebut us from this writ of formedon which is in the right.

BEREFORD, C.J. This writ is not founded in the right; but is to demand a reversion etc.; thus the right will always remain² for him; but by St. Peter, if he had been 'in,' then he would be in his right. Moreover could he not use his writ of right in this case, and offer suit and deraignment? I think he could.

¹ At an earlier date it would have been said that the assize of novel disseisin tried the 'possession' only.

² That is to say, the right was then outstanding as regards the demandant. As to this, see the remark of the Chief Justice on p. 176 below.

Botill. Ceo q'il ussent ore¹ par voi d'accion si useient² avant ceste hure par voi de excepcion, ou³ le contrarie de lour accion ore⁴ fut adonqe trové, la quele chose ore demourt en sa force nent defait etc. Jugement etc.

Toud. Quei qe fut trové adonques, le jugement⁵ se trenchea⁶ fors tansoulement sur ceo q'il fut seisi e disseisi sanz rens trier⁷ le dreit. Mes ore sumes a⁸ tiel recoverir ou nous bioms dereysner nostre primer estat q'est en le dreit.⁹ E n'entendoms pas qe par nul recoverir qe se fit tansoulement sur¹⁰ une possession devoms estre barré.

Ber. La ou vous dites qe le jugement ne¹¹ se fit fors tansoulement etc.¹² sur ceo¹³ q'il fu seisi e disseisi, vous dites talent, qar il n'est pas mester¹⁴ d'enquere ceo q'est granté de la partie ne sur ceo jugement rendre. Mes vous grantastes q'il fu seisi, mes¹⁵ deistes qe celui qe lui¹⁶ fesoit estat n'out poer etc.¹⁷ issint qe sa seisine fu nule¹⁸ si ele ne ust plus lungement continué etc. ou trové fut q'il out poer de lui enfeffer¹⁹ e bon estat e estable faire²⁰ e par tant pleder²¹ tout outre sur son title e nent sur les pointz du bref e le quel title²² fu trové pur bone, par quei a defaire cel title²³ ore n'avendrez mye. Et pur ceo seietz a un si ceo fut issi ou noun.

Herl. Si en assise de novel disseisine le tenant boute encontre moy une relese e quitecleime etc. e²⁴ ceo me barreit²⁵ mye de mon bref de dreit, noun unqore apres²⁶ l'atteinte sur l'assise, nent plus en ceo cas.²⁷

Et furent a dereyn²⁸ chacez a garantir²⁹ le recoverir.

Ber. Pur ceo qe tote la force de ceste matere si chiet sur quel point l'assise fut agardé, ou sur le title ou sur le point du bref,³⁰ suwes³¹ qe nous eoms le recorde devant nous.

¹ cy, C; icy, Q. ² usuerent, C, T. ³ ou, C, Q, T, en, D. ⁴ Om. ore, C, Q.
Ins. ne, C. ⁶ trench', C, Q. ⁷ For sanz rens trier, *subs.* sanz ceo qe rien fut trié en, C, Q. ⁸ en, C, Q. ⁹ For nostre . . . dreit, *subs.* le dreit de nostre primer estat, C, Q. ¹⁰ en la, C, Q. ¹¹ Om. ne, P, Q. ¹² Om. etc. C, Q. ¹³ Om. sur ceo, C, *Ins.* qe vous dites, C, Q. ¹⁴ Om. mester, D. ¹⁵ mesme, T. ¹⁶ qique le, T. ¹⁷ Om. etc. C, D, Q. ¹⁸ est nul, C; n'est mye, Q. ¹⁹ Om. de lui enfeffer, C, Q. ²⁰ Om. faire, C, Q. ²¹ pledent, C, Q; pleder, T. ²² For e le quel title, *subs.* ou, C. ²³ Om. e nent sur . . . cel title, Q. ²⁴ Om. e, C, Q, T. ²⁵ barr', D, T. ²⁶ Om. apres, C. ²⁷ Om. nent . . . cas, C, Q. ²⁸ Om. a dereyn, C, Q. ²⁹ Error for 'granter.' ³⁰ *Ins.* pur quei, C, Q. ³¹ avetz, Q, sywit, T.

Botiller. What they use now by way of action they used heretofore by way of exception ; and the contrary of their present action was then found, and the judgment still remains in its force and not undone etc. Judgment etc.

Toudeby. Whatever was found then, the judgment rested solely on this, whether he was seised and disseised, without the right being tried. But now we are at a recovery in which we wish to deraign our first estate which is in the right. And we do not think that we ought to be barred by any recovery, which was obtained on possession only.

BEREFORD, C.J. There where you say that the judgment was obtained only upon this point whether he was seised and disseised, you speak irrelevantly ; for there is no need to enquire about what has been granted by a party, nor to render judgment upon that. You admitted that she was seised but said that he who made the estate to her had no power so to make it etc. ; so that her seisin would have been void, if she had not continued it longer etc. It was found that he had power to enfeof her and to make a good and stable estate, and upon that they pleaded further upon her title and not upon the points of the writ and the title was found good. And so you will not arrive at undoing that title now. Therefore be at one whether this was the case or not.

Herle. If in an assize of novel disseisin the tenant produce against me a release and quitclaim, that would not bar me from my writ of right, nor at any time afterwards from¹ a [writ of] attain on the assize ; nor should it in this case.

And they were driven at last to grant the recovery.

BEREFORD, C.J. Seeing that the whole force of this matter rests on this, namely on what point the assize was awarded, on the title or on the points of the writ, sue [a writ] that we may have the record before us.

¹ The correct translation is not quite certain here.

II.¹

Forme de doun en le *reuerti* ou dit fut qe ceo q'il use ore pur accion avant cez houres usa il par voie de excepcion en assise de novel disseisin etc:

Johan de K. porta son bref de forme de doun en le *reuerti* vers Eleyne de C.

Scrop. Autrefietz mesme cesti J. qe ore porte cesti bref nous disseisi de mesme les tenemenz qe ore sount en demaunde, et nous portames l'assise de novel disseisine vers mesme cesti J., et il nous respoundi adonqe et dit q'il dona mesme les tenemenz a Willam son frere et a les heirs de lour² corps engendrez reservaunt la reversioun a ly mesme et a ses heirs; le quel Willam, dit,³ nous enfeffa de mesme les tenemenz, et pur ceo q'il vit qe le feffement fut fet a la disheritesoun il entra com bien lui loust. (*Denom.* Si le cas fut tiel il purra bien entrer sanz disseisin fere a ascon.) Adonqe replia a counte⁴ cel exceptioun, et la ou il dit qe J. dona ceux tenemenz a W. son frere en fee taille einz en fee simple, et ceo tendoms⁵ de averrer par assise. Et Johan le revers. Et l'assise chargé en cel poynt ou trové fut par verdit qe Johan dona ceux tenemenz a Willam en fee simple, qi estat nous avoms, issint qe nous recoveroms⁶ nostre seisine par jugement sur verdit de cele assise, le quel jugement esta unqore en sa force. Par que nous demaundoms jugement, del hure qe cel q'il eust⁷ pur excepcioun fut trové adonqe pur nul par l'assise, si accioun par cesti bref de forme de doun vers nous pussez user.

Willb. Voillez par un assise pris en pays ouster nous de nostre recoverir par cesti bref q'est de plus haut nature en ceste court. Jeo n'entenke mie, qe vous le pussez fere.

Ber. Pur quei ne mye, si ele puisse averrer son dit ?

Scrop. Sire, nous vous dioms qe nous etc. par jugement *ut supra*, le quel jugement esta unqore en sa force e de ceo vouchoms recorde de roudle par les assise de Nichole prise etc. dont etc. devant etc. e issint prist issue.

Ber. Savez doner⁸ recorde etc. ?

Herle. Si quitecleime soit mis avaunt encountre moy en assise de novel disseisine, et jeo sey barré del assise, unqore averay jeo mon recoverir par mon bref de dreit.

¹ From *M* collated with *P*. ² soun, *P*. ³ *Subs.* si dit il, *P*. ⁴ *Fcr*
a counte, *subs.* encontre, *P*. ⁵ tendimes, *P*. ⁶ recoverymes, *P*. ⁷ usa, *P*.
⁸ *Subs.* Suez vostre, *P*.

II.

A writ of formedon in the reverter. It was said that that which the demandant was now using for his action, he had heretofore used by way of exception in an assize of novel disseisin.

[William of Haselholt] brought his writ of formedon in the reverter against Ellen of [Haselholt].

Scrope. Heretofore this same [William] who now brings this writ disseised us of the same tenements which are now in demand, and we brought the assize of novel disseisin against this same [William]; and he answered us then and said that he gave the tenements to [John] his brother and the heirs of his body begotten reserving the reversion to himself and his heirs; and this [John], so he said, enfeoffed us of the same tenements, and because William saw that the feoffment was made to his disinheritance, he entered as well he might. And *Denham*¹ said that if the case were such, William could well enter without disseising anyone. Then [Denham] replied to that exception thus:—Whereas they say that [William] gave these tenements to [John] his brother in fee tail [we say that he did not give them in fee tail] but in fee simple, and this we offer to aver by the assize. And [William] offered the reverse, and on that point the assize was charged, and it was found by verdict that [William] gave these tenements to [John], whose estate we have, in fee simple, so that we recovered our seisin by judgment upon the verdict of that assize, and that judgment is still in force. Therefore since that which he used as an exception was then found as no exception by the assize, we ask judgment if you can use an action by this writ of formedon.

Willoughby. Will you by an assize taken in the country oust us from our recovery by this writ, which is of a higher nature, in this court? I do not think that you can do it.

BEREFORD, C.J. Why not, if she can aver her statement?

Scrope. Sir, we tell you that we entered etc. by judgment (as stated above), and this judgment is still in force, and of it we vouch the record of the roll of assizes taken by [William de Montemer] etc. whereof etc. before whom etc.; and [we say that] in this way the issue was taken.

BEREFORD, C.J. Can you give the record etc.?

Herle. If a quitclaim be produced against me in an assize of novel disseisin and I am barred from the assize, I shall still have my recovery by my writ of right.

¹ It seems that Denham was engaged as counsel for Ellen at the hearing of the assize.

Ber. Vous dites verité.

Herle. C'est nostre bref de dreit overt.

Herle. Ceo mesme le bref de dreit ¹ en ceo cas, qar autre bref de dreit ne pooms aver. E ceo nous entendoms par quei tut seoms ousté autrefoitz par assise, nous averoms nostre recoverir par cesti bref q'est nostre bref de dreit.

Ber. Vous entendez malement, qar vous averez vostre dreit ² bref de dreit overt, la ou vous clamez par voie de reversioun.

Ber. Eiez vostre recorde.

Et dies datus est de recordo.³

III.⁴

Ou verdit d'assise de novele disseisin fust resceu au bref de forme de doun.

Johan de Hasselou porta sun bref de forme du doun en le *reuerti* vers Elene fille Edmonde Hasselo des certainz tenemenz en C.

Botiler. Accion ne puet il avoir, qar ceo qe il use ore pur accioun, autrefoiz usa pur excepcioun ou mesme ceste Eleine porta l'assise de novele disseisine vers mesme cestui Johan de mesme les tenemenz en le conté de Warwyk devant Sire Roger de Mortimer e R. de Beaufé justices assignés tiel an etc. ou mesme cestui Johan vient e dist qe il ceux tenemenz dona a W. sun frere e les hëirs de sun corps engendrez le quel W. en sun lit mortiel enfeffa ceste Elene en desheritance de lui. Johan appersuit sa desheritance e freschement entra sanz tort ou disseisin faire, e demaundoms jugement e prest etc. Elene respondit qe Johan dona a W. en fee pure noun pas en fee taillé, prest etc. L'assise chargé sur cel point qe dit qe en fee pure, parquei Elene rescoversa adonqe sa seisine; e demandoms jugement si ore puisse accioun avoir de ceo qe autrefoiz fust trové le revers par verdit de assise, ceo verdit esteant en sa force.

Willuby. Si rien fust trové par assise de novele disseisine, qe nous ne vous grauntoms mie, ceo nous ne deit grever, car novel disseisine ne puet soulement trier qe fraunc tenement, e cestui est nostre bref de droit. Jugement, etc.

Bereford. Il serroit fole court qe agardereit franc tenement a la partie en assise de novel disseisine sanz ceo q'il ne moustrast title

¹ *Om. Herle . . . dreit, P.* ² *Om. dreit, P.* ³ *reddendo, P.*

⁴ *From Y (folio 113, r°).*

BEREFORD, C.J. That is true.

Herle. This is our writ of right patent.

Herle. This is a writ of right in this case, for another writ of right we cannot have. And we think that although we were ousted heretofore by assize, we should have our recovery by this writ, which is our writ of right.

BEREFORD, C.J. You are wrong, for you may have your writ of right patent in a case where you claim by way of reversion.

BEREFORD, C.J. You may have your record.

A day is given for the record.

III.

A case in which the verdict of an assize of novel disseisin was received in answer to a writ of formedon.

[William] of Haselholt brought his writ of formedon in the reverter against Ellen the daughter of [Miles] of Haselholt of certain tenements in C.

Botiller. Action he cannot have, for what he now uses for action, he used heretofore for exception, namely, when this same Ellen brought the assize of novel disseisin against this same [William] of the same tenements in the county of Warwick before Sir Roger de Mortemer and R. de [Beaufoy] justices assigned in such a year etc. and when this same [William] came and said that he gave these tenements to [John] his brother and the heirs of his body begotten, and this [John] on his death-bed enfeoffed this Ellen to the disinheritation of him William. [William] perceived that he was being disinherited and forthwith entered without tort or disseisin. We ask judgment and are ready etc. Ellen answered and said that [William] gave to John in fee simple and not in fee tail, and was ready to aver it. The assize was charged upon this point and said that he gave the tenements in fee simple, whereupon Ellen then recovered her seisin. We ask judgment if he can now have an action on a point whereof the reverse was found heretofore by the verdict of an assize, that verdict being still in force.

Willoughby. If anything was found by the assize of novel disseisin, which we do not grant, it ought not to harm us, for novel disseisin can try frank tenement only, and this is our writ of right. Judgment etc.

BEREFORD, C.J. It would be a mad court which awarded frank tenement to a party in an assize of novel disseisin without his showing

coment franc tenement etc. si l'assise ne deit a lour peril q'il fust seisie e diseissi.

Herle. Si le tenant meist quitance en barre del assise il barreit l'assise; nent resteant cel quitance le demandant usereit sun bref de droit apres, mes teu bref q'il use ore est sun bref de droit, par quei.

Bereford. Vous dites verité. Mes ore il vous chasont a vostre bref de droit, si vous quidez droit avoir, mes la ou vous dites qe ceo bref est un bref de droit, vous dites mal, car touz les brefs de forme de doun sunt brefs de possession tanke les tenemenz soient venuz en le droit saunke ou par descence ou par reversion.

Hervi. Al heure quant Johan respondit a la disseisine, il granta la seisine Elene e excusa sun tort par le doun fet en fee taillé. Coment avereit Elene l'assise sanz ceo qe ele ne respondist en defesant sun title, e meuz ne puet ele respondre qe estre travers a sun title le quel fust trové par assise, par quei il vous covent dire autre chose.

Willuby. Ou e devant qi fust ceste assise prise?

Botiler. Devant Sire R. de Mortimer e R. de Beaufou justices assignez en le conté de Warrewyke anno etc.

Willuby. Eez vostre record.

Et dies datus est in octabis sancti Michaelis.

Note from the Record.

De Banco Rolls, Easter, 4 Edw. II. (No. 185), r. 29d, Warwick.

William the son of Miles¹ of Haselholt demands against Ellen the daughter of Miles of Haselholt eight acres of land two acres of meadow and a moiety of a messuage in Haselholt² next Preston Bagot which William gave to John the son of Miles of Haselholt and the heirs of the body of him John issuing and which after the death of John to the aforesaid William ought to revert by the form of the gift, on the ground that John died without an heir of his body (*de se*) issuing etc. And whereupon he says that William was seised of the tenements in his demesne as of fee and right in time of peace in the time of king Edward I., taking thereof the profits to the value etc. and he gave those tenements to John in form aforesaid etc. and which after the death of John to William ought to revert by the form of the gift aforesaid on the ground that John died without etc. And thereof he produces suit etc.

And Ellen comes by her attorney, and denies his right when etc. And she says that William can claim nothing in the tenement by reason of the reversion etc.; for she says that she heretofore in the court of king Edw. I. before William de Mortemer and Roger de Beaufoy (*de Bella jago*) justices assigned for taking the assizes³ in the county aforesaid at Warwick on [3 February

¹ He is called Willelmus Miles in the assize roll mentioned in the second footnote following this.

² Haselholt is near Henley in Arden.

³ The reference to this assize is *Assize Rolls*, No. 965, r. 20.

his title, how he came to the frank tenement, unless the assize said at its peril that he was seised and disseised.

Herle. If the tenant put forward an acquittance in bar of the assize, it would bar the assize. Notwithstanding that acquittance the demandant would use his writ of right afterwards. But this writ which the demandant uses now is his writ of right. Therefore etc.

BEREFORD, C.J. You say what is true. But now they drive you to your writ of right if you think that you have right ; but there where you say that this writ is a writ of right, you speak wrongly, for all writs of formedon are writs of possession until the tenements have come into the right blood either by descent or by reversion.

STANTON, J. When [William] answered as to the disseisin, he granted the seisin of Ellen and excused his tort by the gift made in fee tail. How could she have had the assize unless she answered by undoing his title, and how can she answer better than by traversing his title, which traverse was found good by the assize ? Therefore you must say something else.

Willoughby. Where and before whom was this assize taken ?

Botiller. Before Sir [William] de Mortemer and Sir R. de Beaufoy justices assigned in the county of Warwick in the year etc.

Willoughby. Produce your record.

A day was given, namely, the octave of St. Michael.

Note from the Record (*continued*).

130 $\frac{6}{7}$] the Friday next after the feast of the Purification of the Blessed Mary 35 Edw. I. brought a certain writ of novel disseisin against him William concerning the tenements, and this William in answering the assize etc. said that John who held those tenements by the form aforesaid having no issue etc. wished upon his deathbed to alienate them to Ellen to the disinheretance of William etc. ; and on account of this William entered into the tenements which ought so to revert to him as well he might, without injury or disseisin etc. ; to which Ellen replied that William had enfeofed John of the tenements to hold in fee simple etc. and not in the form aforesaid and that Ellen was seised of the tenements by the feoffment of John as of frank tenement etc. until William unjustly etc. disseised her of the tenements ; and by this assize taken thereof there between them it was found that John had fee simple in the tenements by the gift of William and that Ellen was seised of those tenements by the deed of John and disseised by William etc. ; and therefore (*per quod*) it was awarded that Ellen should recover her seisin thereof against William etc. And from the fact that William then in alleging etc. asserted that John held the tenements by the form of the gift etc. and that as well he as Ellen put themselves respectively (*hinc inde*) on the assize in the form aforesaid etc. ; and by this assize it was found that John had fee simple in the tenements, which is contrary to William's action as regards

Note from the Record (*continued*).

this writ etc., and the judgment of this assize is still in force (*stat in suo robore*) etc. she asks judgment if an action can now avail William by this writ of formedon founded upon the same action which he previously used for a title at the assize etc. which action by the same assize in which he placed himself as aforesaid was annulled; And that that assize so passed between them etc. she puts herself upon the record of the rolls of the justices of the time aforesaid etc.

And William says that no assize there passed thereof between them in the form in which Ellen alleges above.

Therefore word is sent to William de Mortemèr that his rolls of the time aforesaid be searched and that he send the record and process of the assize with all things touching it to the justices here on the morrow of St. John distinctly and openly under his seal etc. At which day came William and

20. DANIEL *v.* FITZRALPH.¹

Un Johan porta bref de meen et dit qe atort ne ly aquite etc. e pur ceo atort etc. la vint nostre seigneur le roy et ly demaunde renable eyde a sa fille marier.

Herle. Quei avez del aquitaunce?

Bacon. Veyez ci le fet vostre auncestre.

Herle. Nous vous dioms qe cel eyde dount il prie l'aquitaunce n'est pas chose qe chiet en aquitaunce, einz est collect quant graunté a roy par la communalte du roylme.

Bacon. La chartre veut qe vous ly aquitez 'de omnibus seruiciis, exaccionibus et demandis.' Jugement.

Herle. Souñ bref veut qe nous li aquitoms des servicez qe le roy li demaunde. Et nous dioms qe renable eyde n'est pas service einz un graunt fet a roy sicum le dyme doner.

*Howard.*² N'est pas semblable de l'eyde et de dyme doner; qar cete eyde coment q'il soit graunté il est approprement³ des servicez issaunz de fee, sicum escuage est un service q'est due a chief seigneur, ne pur quaunt il averount del graunt le roi. E pur ceo qe vous avez conu qe vous ly devez aquiter et vous ne dedites point q'il n'est destreint pur vostre defaute etc. si agarde la court qe vous li aquitez desoremes, et q'il recovere devers vous ses damages et vous en la merci.

¹ The date of this case has not been determined. A copy of the record has been obtained from Y, but unfortunately it is not dated. In 4 Edw. II. Sir John Bacon, who is one of the advocates in this report, was *custos breuium*, but no serjeant of that name is known to have practised either at that date or in the closing years of the reign of Edw. I. Probably the name Bacon has been attributed to one of the serjeants in this case in error.

² William Howard the judge died at the beginning of the year 2 Edw. II.

³ The reading of this word is doubtful.

Note from the Record (*continued*).

likewise Ellen by her attorney. And William de Mortemer sent word that he could not send here the record and process of the assize of novel disseisin between the parties on the ground that by the king's order he sent all his rolls of the county aforesaid to the treasurer and barons of the Exchequer here three weeks after Easter last past. Therefore word is sent to the treasurer and chamberlains that the rolls aforesaid of the time aforesaid be searched and that they send distinctly and openly under the foot of the seal of the exchequer the record and process of the assize aforesaid with all things touching it to the justices here on the octave of St. Martin.

Afterward on that day Ellen came by William Body her attorney and offered herself on the fourth day against William on the plea aforesaid etc. And he did not come; and he was demandant. Therefore let Ellen go thereof without day, and let William and his pledges of prosecuting be in mercy.

20. DANIEL *v.* FITZRALPH.

One John brought a writ of mesne and said that wrongly he does not acquit him etc. and for this wrongly etc. [whereas etc.] there comes our lord the king and demands from him a due aid for marrying his daughter.

Herle. What have you of the acquittance?

Bacon. See here the deed of your ancestor.

Herle. We tell you that this aid whereof he prays the acquittance is not a matter of acquittance; but is a tax collected when granted to the king by the commonalty of the realm.

Bacon. The charter says that you will acquit him 'of all services exactions and demands.' We ask judgment.

Herle. His writ says that 'we acquit him of the services which the king demands from him.' We say that due aid is not a service but a grant made to the king like the tenth penny.¹

HOWARD, J. Aid and a tenth penny are not similar; for this aid although it be granted is yet properly one of the services issuing from the fee, just as escuage is a service due to the chief lord, and yet the lord would have it by the grant of the king. And because you have acknowledged that you ought to acquit him and you do not deny that he is distrained for your default, the court awards that you acquit him henceforth; and that he recover his damages against you and that you be in mercy.

¹ It is assumed that the 'doner' of the text is an error for 'dener.'

Note from the Record.¹

Nicholas fitz Ralph was summoned to answer Adam Daniel of Walpol² on a plea that he acquit him of the service which our lord the king demands from him for his frank tenement which he holds of the aforesaid Nicholas in Walsoken whereas Nicholas who is mesne between them ought to acquit him etc. And whereupon he complains that—whereas he holds of Nicholas forty acres of land in Walsoke by homage fealty and the service of seven pence a year and of making trenches for the sea water (*ad operandum fossatas maris*) and cleansing the sea sewers when there should be need according to the custom of the country, of which services Nicholas ought to acquit him against whomsoever etc.—the king distrains him in the aforesaid tenement for five shillings for marrying his first-born daughter by default of the acquittance. Whereupon he says that he is injured and has damage to the value of etc. And he proffers a charter under the name of Ralph which witnesses that Ralph the father etc. enfeoffed Adam of the tenement by the aforesaid services and bound himself and his heirs to warrant and acquit etc.

And Nicholas comes and defends tort and force when etc. and well acknow-

21. THE KING *v.* WALSAY³.

Le roy porta son *quare impedit* vers Cristiane de Falsey et dit qe⁴ Julian presenta com de⁵ dreit Beatrice a la eglise de F. un son clerk Willem de Merton qe a son presentement etc. de B. descendi le dreit del avoweson a Johan Devous⁶ com a fitz et heir q'est en la garde le roy par la resoun del noun age Johan fitz etc. en sa garde esteaunt.

Pass. Jugement de counte, q'il ad counté qe Johan⁷ presenta *ut supra*, et ad fet sa descente; et issint cleime il etc. et rien n'ad lié en la persone Johan a qi ceste avoweson apartent ne en sa seisine⁸ demene par le noun age Johan etc.

Toud. Le bref⁹ est le tittle le roy pur ceo qe l'eir est en sa garde; et al heir le sang est tittle de avoweson.

Pass. Un Walter de Heydon fut seisi de un mees aqi etc. qe presenta un Johan par noun son clerk en temps le roy H.¹⁰ de W. descendi le dreit de mees et del avoweson a Beatrice com a fille qe se fit esposer a un Johan le quel Johan presenta un autre Willem Passemer com

¹ The enrolment of this case has not been found. The translation of the record which follows is from Y (fo. 196 r^o). It should be noticed that in Michaelmas term 34 Edw. I. Adam Daniel of Walsoken brought an action of mesne against the same defendant with respect to services which Robert of Watevill and Desiderata his wife demanded from him in Walsoken (*De Banco Rolls*, No. 161, r. 31 d). This action had not been heard in Michaelmas term 4 Edw. II. (*Ibidem*, No. 184. r. 144.) Further proceedings in mesne were also then pending with respect to the services mentioned in the case printed on this page. (*Ibidem*.)

² This is probably an error for Walsoken. See note 1 on this page. ³ From *M.*

collated with *P.* ⁴ *Ins.* unc. *P.* ⁵ du, *P.* ⁶ de Mouns, *P.* ⁷ Juliane, *P.* ⁸ person, *P.* ⁹ Heir, *P.* ¹⁰ *Ins.* qe a son presentement etc., *P.*

Note from the Record (*continued*).

ledges the charter to be the deed of Ralph his father, but he says that he is not bound by reason of such an exaction of five shillings made by the king for his first-born daughter etc. He says, indeed, that such an action arises by reason of the fees of knights, which fees are burdened with such a demand, and concerning those fees the moneys should be levied from those who hold them etc. Whereupon, seeing that the king demands such an aid by the grant made to him by the commonalty of the realm the moneys ought to be levied from those holding such fees, and therefore (*per quod*) such a demand is not a service issuing from the tenements etc. ; he asks judgment if Nicholas ought to be bound to the acquittance etc.

Afterwards at that day the parties came by their attorneys, and because Nicholas acknowledged the writing etc. and that the exaction arises by reason of the fees etc. and consequently he cannot deny that the demand is due by reason of the tenements, and therefore issues from the tenements, it is adjudged that Nicholas acquit Adam of the aid aforesaid etc. and that Nicholas be in mercy etc. and that Adam recover his damages etc. and how etc. let it be made known here on the octave of St. Michael. And the sheriff is ordered to distrain Nicholas to acquit etc.

21. THE KING *v.* WALSAY.

The king brought his *quare impedit* against Christian of [Walsay] and said that [John de Meaux] presented as of the right of Beatrice to the church of [North Cave] one William of [Carleton] his clerk who on his presentment etc. ; from John descended the right of advowson to one [Godfrey de Meaux] as son and heir, [and from Godfrey to one John as son and heir,] who is in the king's ward by reason of his nonage.

Passeley. We ask judgment, for he has counted that John has presented (as above stated), and has made his descent from him ; and so he claims etc., and he has laid nothing in the person of John, to whom this advowson belongs, nor in his own seisin by reason of the nonage of John.

Toudeby. The heir is the king's title, because the heir is in his ward, and for an heir blood is title to an advowson.

Passeley. One Walter of Hedon was seised of a messuage, to which etc. and presented his clerk one [William Pasemer] by name in the time of King Henry, and from [Walter] descended the right of the messuage and the advowson to Beatrice as daughter who married one John [de Meaux] and this John presented another William Pasemer

¹ A note of this case appears among the reports of Trinity term 34 Ed. I. (*Year Books*, 33-35 Edw. I., Rolls Series, p. 245).

del dreit sa femme qe a son presentement etc. Et pus Johan tynt par la ley d'Engleterre apres la mort Beatrice¹ un G. etc. et apres lui un Willem de Merton, par qi mort etc.; de Beatrice descendi le dreit etc. a Geffrai com a fitz le quele Geffrai enfeffa ceste Cristiane del mees et del avoweson ove les appurtenaunces et issint appent etc. et noun pas au roy.

Toud. Et nous jugement desicom il ount conu le presentement Johan² de qi le roy prent son tittle par resoun etc. et ne moustre pas coment seit appurtenaunt au mees. Jugement pur le roy.

Malb. Nous avoms fet l'avoweson appurtenaunt au mees en temps roi H. jesqe en cea par my presentement qe ount esté présenté com appurtenaunt. Et vous ne moustrez rien qe le fet des appurtenaunces.³ Jugement, et prioms bref al evesqe etc.

Note from the Record.

De Banco Rolls, Easter, 4 Edw. II. (No. 185), r. 92d, Yorkshire.

Christian of Walsay was summoned to answer the king on a plea that she permit him to present a fit parson to the church of North Caue which is void and to the king's gift belongs by reason of the custody of the land and heir of Godfrey de Meaux (*de Melsa*) being in the king's hands. And whereupon the king by Adam of Brom who sued for him says that the advowson was sometime in the seisin of one John de Meaux who presented to that church one William of Carleton his clerk who on his presentment was admitted and instituted in time of peace in time of king Edward I. by whose death that church is now vacant; and from John descended the right of the advowson etc. to one Godfrey as son and heir etc., and from Godfrey descended the right etc. to one John as son and heir who is within age and in the king's ward, and for that reason it belongs to the king now to present etc. to that church, wherefore Christian unjustly disturbs the king thereof. And this he is ready to aver on behalf of the king.

And Christian by John of Sketon her attorney comes and defends tort and force when etc. and says that it belongs to her Christian and not to the king now to present etc. to the church because, she says, one messuage in North Caue to which the advowson of the church pertains was lately in the seisin of one Walter of Hedon who presented one William Pasemer his clerk to that church, who on his presentment was admitted and instituted in time of peace in time of king Hen. III., and from Walter descended the messuage to which the advowson etc. pertains to one Beatrice as daughter and heiress which Beatrice married John de Meaux the elder, so that afterwards when the church was void by the death of William Pasemer, John de Meaux as of the right of Beatrice presented to the same church a certain other William Pasemer his clerk, who on his presentment was admitted and instituted in time of peace in the time of king Henry III., and afterwards when the church

¹ et presenta etc., *P.* ² Juliane, *P.* ³ The words 'des appurtenaunces,' which occur in both texts, are perhaps an error for 'de sa precentement.'

in right of his wife, who on his presentment was admitted etc. Then John held by the law of England after the death of Beatrice and presented one G. etc. and afterwards one William of [Carleton] by whose death etc. From Beatrice the right etc. descended to [Godfrey] as son, and this [Godfrey] enfeoffed this Christian of the messuage and the advowson with its appurtenances; and so it belongs to her to present, and not to the king.

Toudeby. And we ask judgment, on the ground that they have acknowledged the presentment by John [de Meaux], from whom the king takes his title by reason etc.; and they do not show how the advowson is appurtenant to the messuage. We ask judgment for the king.

Malberthorpe. We have made the advowson appurtenant to the messuage from the time of King Henry till now, by means of presentments which have been made as appurtenances. And you show nothing which makes the advowson to be in the king's presentment.¹ We ask judgment and pray a writ to the bishop etc.

Note from the Record (*continued*).

was void by the death of William Pasemer the second etc. the same John de Meaux as of the right of Beatrice presented to the same church one Gilbert de Meaux his clerk who on his presentment was admitted and instituted in time of peace in the time of king Edward I.; and this Beatrice died so that after her death John de Meaux held the messuage to which etc. by the law of England of the inheritance of Godfrey de Meaux the son and heir of John and Beatrice etc. and afterwards when the church was void by the death of Gilbert, John de Meaux presented to the same church the aforesaid William of Carleton who on his presentment was admitted etc. and this messuage to which etc. after the death of John de Meaux came into the seisin of Godfrey and this Godfrey granted and demised it to Christian to hold for the term of her life. And thereof Christian is now seised etc. and for that reason it belongs to her now to present etc. to the church.²

And Adam of Brom who sues for the king says that since Christian expressly acknowledges that the ancestors of the aforesaid heir presented their clerks aforesaid to the church successively till now, and on their presentment the clerks were admitted; and [since] she cannot deny that the heir is within age and in the king's ward etc.; and [since] Christian shows no special deed by which the court is made evident of her estate which she claims in the advowson in this behalf etc., it therefore (*unde*) seems to him that it belongs to the king and not to Christian now to present to the church. Whereupon he asks judgment on behalf of the king.

And Christian says that the king can claim nothing in the presentation to the church at present by reason of the wardship of the heir unless as a

¹ See Note 3 opposite.

² The word 'cras' is here written in the margin of the roll.

Note from the Record (*continued*).

stranger (*extranea persona*) etc. She says in truth that whatever the king has in the wardship of the heir, he has it by reason of the wardship of the land and heir of John Wake, which is in the king's hand, of whom Godfrey the father of the aforesaid heir held his tenement by military service etc. as the wardship of a wardship etc. Whereupon, since she is ready to aver that she is seised of the messuage to which the advowson of the church belongs, as is aforesaid, to which Adam who sues for the king answers nothing, she asks judgment and a writ to the bishop, etc.

A day is given them here on the octave of Trinity, saving to both parties their arguments to be stated on either side etc. (by the precept of the earl of Gloucester, announced by H. le Scrop).

Afterwards at that day came as well Christian by John her attorney as Adam who sued for the king, and thereupon the king sends his writ under the privy seal etc. to the justices here in these words.

'Edward by the grace of God king of England lord of Ireland and duke of Aquitaine to our dear and faithful Sir William of Bereford and his fellow justices of the bench greeting. We have heard that there is a cause before you in our said bench between us and Christian of Walsaie of this that she suffer us to present a fit parson to the church of Northcave which is void and to our gift belongs as we hear by reason of the wardship of the heir and of the land of Godfrey de Meaux (who is dead and held of us in chief) being in our hand, and that she is moved to raise a debate between us in this matter by people of our court who wish to usurp (*accrocher*) that advantage to themselves and to oust us by a procured jury (*par pais procurez*) as far as (*si avant come*) they can drive us to this, to the great loss of us and the disinheritance of the said heir, And because we are bound to save our estate and the estate of the said heir in all things so long as he shall be within age and in our ward we send you word firmly enjoining you that for no procurement on the said matter do you proceed further in any way until you have other commandment from us, for we wish to be tender of our estate and of the estate of the said heir, and to be advised and to endeavour by all good ways possible to avoid the danger of a procured jury and to save our presentment to the said church this time. Given under our privy seal at Berewik on Twede the third day of June in the fourth year of our reign.'

22. BRAE v. PRIOR OF ST. JOHN OF JERUSALEM.¹

Quare impedit, ou le pleintif fit sa descent du maner a quei l'avoweson fut appendant. Et pur ceo q'il ne fit sa descent du dreit del avoweson soun counte fu chalengé.

Michel de Bray porta son *quare impedit* vers le Priour del Hospital de Saint Johan de Jerusalem e conta qe atort etc. covenable persone² a la eglise de la ville de Saint Clier etc. E dit qe a lui appent a presenter

¹ From *D* collated with *C*, *Q* and *T*.

² *Ins.* presente etc., *C*, *Q*. *Om.* covenable persone, *C*, *Q*.

Note from the Record (*continued*).

Afterwards the king at the end of Trinity term next following sent to his justices here his writ under the privy seal in these words :—

‘Edward by the grace of God king of England lord of Ireland and duke of Aquitaine to our dear and faithful Sir William of Bereford and his fellows our justices of the bench greeting. Notwithstanding that we sent you word recently by other our letters that you proceed not in the cause which is pending before you by our writ between us and Christian of Walsay on the advowson of the church of Northcave, we nevertheless send you word that notwithstanding our said order you proceed to render judgment in the same cause according to the plea pleaded and according to the law and usage of our realm without any delay, so that by your default the collation of the same church devolve not on the ordinary of the place if it should of right belong to the same Christian. Given under the privy seal at Berwyk on Twede the tenth day of July in the fifth year of our reign.’

And now that is to say the 17th day of July at the end of the term aforesaid came Adam of Brome who sued on behalf of our lord the king, being forewarned by the justices that he should be present etc. to state on behalf of the king in this behalf whatever etc. and the aforesaid Christian by her attorney came. And Adam is asked by the justices if he wishes to say on behalf of the king anything other than that which he said before, and if he is willing to await the averment which Christian offers, to wit, that she is seised of the messuage to which the advowson belongs etc. and he does not deny the seisin of Christian nor is willing to receive the averment of the country, but asks judgment on behalf of the king as before etc. And Christian likewise asks judgment etc. Therefore the court proceeds to judgment. And because Christian offers to aver that she is seised of the messuage to which the advowson of the church aforesaid belongs etc. to which seisin Adam, who sues etc. claiming the presentation aforesaid in the name of the king, as of the right of the aforesaid heir, is bound (*necesse haberet*) to answer, and he is unwilling to await that averment and to say anything which should be sufficient for the king in that behalf, it is awarded that Christian recover her presentation to the church, and that she have a writ to the archbishop of York that notwithstanding the king’s claim on the presentment of Christian he admit a fit parson to the church etc.

22. *BRAE v. PRIOR OF ST. JOHN OF JERUSALEM.*

Quare impedit. The plaintiff made his descent with respect to the manor to which the advowson was appendant. His count was challenged because he did not make his descent with respect to the right in the advowson.

Michael de Bray brought his *quare impedit* against the prior of the Hospital of St. John of Jerusalem and counted that wrongly he does not suffer him to present a suitable parson to the church of the vill of St. Cleer etc. And he says that it belongs to him to present for the

par la resoun qe R. de Marey si fu seisi du manoir etc. a quel manoir l'avoweson etc. est appendant en temps le roi etc. e en mesme le temps presenta un son clere etc., de R. descendi le dreit e etc. du manoir a qi¹ etc. a Beatrice come a fille e heir, de B. a G. com a fuitz etc. de G. a Michel come a fuitz etc. q'ore se pleynt etc.

Mal. Il ad² conté qe le presentement a lui appent par la resoun qe un R. fu seisi du manoir a quei etc.³ e desicom il n'ad lié la descent en⁴ le dreit del presentement de son auncestre a lui etc.,⁵ jugement si a tiel conte deive estre respoundu.

Ingh. Nous avoms dit qe a nous appent etc. por ceo⁶ qe R. nostre auncestre si fu seisi du manoir de R. a quei l'avoweson etc. est appendant, e⁷ issint avoms fait l'avoweson appendant al manoir. Mes si nous en nostre descende deissoms qe de R. descendi le manoir ove⁸ l'avoweson,⁹ en tant¹⁰ ussoms supposé l'avoweson estre un grosse par sei e par tant serront les paroles de counter nec¹¹ pursuwant al comencement, jugement etc.

Ber. Vous dites talent qar vous avez supposé etc.¹² estre un membre du manoir etc. e issi quant vous feistes vostre descent du¹³ gros auxi duisez¹⁴ del avoweson¹⁵ q'est membre.

Toud. Il use cesti bref en lieu de dreyn presentement, mes s'il fut en son dreyn presentement s'il ne fait auxi bien sa descende del avoweson com del maner son counte ne vaudreit nent.¹⁶

Ber. Ceo est un de plus anciens brefs qe sount,¹⁷ qe al ancienne ley il¹⁸ soleit servir pur le dreyn presentement e pur¹⁹ le *quare impedit* e²⁰ pur l'un e l'autre e issi qe quant a ore²¹ voüs le usetz en lieu de dereyn presentement etc.

Malm. Il ne bie a dereiner fors tant soulement²² le presentement, e ceo par resoun qe l'avoweson appent²³ al manoir etc. issi q'il covendra auxi bien faire la descent du dreit²⁴ del avoweson²⁵ del hure qe c'est un membre²⁶ qe put estre severé par espesciauté come si le manoir s'i fut en demande etc. Et demandoms jugement.

Ingh. Le manoir n'est pas en demaunde, einz est un presentement etc. le quel nous avoms fait appendant auxi bien en la descende com en la declaracion e par tant nostre conte pursuwante etc.

¹ *Ins.* l'avoweson, C, Q. ² unt, C, Q. ³ *Om.* a quei etc., C. ⁴ *Om.* la descent en, C. ⁵ *Om.* etc., C, Q. ⁶ la resoun, C, Q. ⁷ *Om.* a quei . . . appendaunt e, C, Q. ⁸ *Subs.* a quei, C, Q. ⁹ *Ins.* etc., C, Q. ¹⁰ *Om.* tant, C. ¹¹ *For* serront . . . nec, *subs.* ne serroit pas le parcelos de nostre count, C, Q. *For* de counter nec, *subs.* del count nient, T. ¹² *Subs.* l'avoweson, C, Q. ¹³ *sic*, T, de, C, Q, D. ¹⁴ *Ins.* vous, C, Q; *for* auxi duisez, *subs.* au diverses, T. ¹⁵ avower, D. ¹⁶ *Add* nec per consequens hic, C, Q, T. ¹⁷ *For* est un de . . . sount, *subs.* vaut plus a teu bref, C. *Sim.* Q. ¹⁸ *Om.* il, C, Q. ¹⁹ puis, Q. ²⁰ *Om.* e, C, Q. ²¹ ceo, Q. ²² *Ins.* la possessioun, ceo est a saver, C, Q. ²³ *Subs.* si est appendaunt, C, Q. ²⁴ bref, D, Q. ²⁵ *Ins.* cum del maner, C, Q. ²⁶ *Ins.* del maner, C, Q.

reason that Reynold of Marsh was seised of the manor etc. to which manor the advowson etc. is appendant, in the time of King John, and at that same time he presented one his clerk. etc. From Reynold descended the right etc. of the manor to which etc. to Beatrice as to daughter and heiress, from Beatrice to Gervais as son etc. ; and from Gervais to Michael who now complains as son etc.

Malberthorpe. He has counted that the presentment belongs to him, for the reason that one Reynold was seised of the manor to which etc. and seeing that he has not laid the descent in the right of the presentment from his ancestor to himself, we ask judgment if on such a count he ought to be answered.

Hengham. We have said that it belongs to us to present etc. because Reynold our ancestor was seised of the manor of [Rosecradock] to which the advowson etc. is appendant, and so we have made the advowson etc. appendant to the manor. But if we in our descent had said that from Reynold the manor descended with the advowson, we should have thereby supposed the advowson to be a gross by itself, and so the close¹ of our count would not have been consistent with the commencement. We ask judgment etc.

BEREFORD, C.J. You are wrong, for you have supposed the advowson to be a member of the manor, and therefore when you made your descent of the gross, you should have made it also of the advowson which is a member.

Toudeby. He uses this writ in place of the *darain presentement*, and if he were using a *darain presentement* and he did not make his descent as well of the advowson as of the manor his count would be worthless.

BEREFORD, C.J. This is one of the most ancient writs which exist, for at the ancient law it used to serve both for the *darain presentement* and the *quare impedit*; so that to this very day you might have it in place of the *darain presentement*.

Malberthorpe. He wishes to deraign the possession only, that is the presentment, and this on the ground that the advowson is appendant to the manor etc. so that it is necessary to make the descent as well of the right to the advowson as of that to the manor, seeing that it is a member of the manor which can be severed by specialty, just as the manor itself if it were in demand. We ask judgment.

Hengham. The manor is not in demand but a presentment etc. which we have made appendant as well in the descent as in the declaration, and therefore our count is consistent.

¹ The translation here follows the text of *C* and *Q*.

Ber. pria as serjantz qe la excepcion fut pardoné e q'il vousissent dire outre.

*Hunt.*¹ La ou le bref dit qe la eglise est voide nous vous dioms qe pleyn le jour du bref purchacé e xx auntz avant le bref etc. e par le fait lour auncestre qi heir etc.² (Et mist avant le fait a la court e auxi une fine qe se leva etc. e auxi ³ une lettre de Eveske de Excestre coment la eglise fut approprié etc.) et demandoms jugement du bref.

Ingh. Voide, prest de averrer ou nous devons.

Et scribatur episcopo quod inquirat de plenitudine ecclesie predictae etc. et ideo etc.

Note from the Record.

De Banco Rolls, Easter, 4 Edw. II. (No. 185), r. 33, Cornwall.

The prior of the hospital of St. John of Jerusalem in England was summoned to answer Michael of Brae on a plea that he permit him to present a fit parson to the church of the vill of St. Clare ⁴ next Reskaradeg which is vacant and to his donation belongs etc. And whereupon Michael by his attorney says that one Reynold of Marsh sometime was seised of the manor of Reskaradeg, to which the advowson of the church of the vill pertains, who presented to the church one Robert of Marsh his clerk, who on his presentment was admitted and instituted in time of peace in the time of king John; and from Reynold descended the right of presenting etc. by reason of the manor aforesaid to one Beatrice as daughter and heiress etc. and from Beatrice to one Gervase as son and heir, and from Gervase descended the right of presenting etc. by reason of the manor aforesaid to Michael who now complains as son and heir etc. And he says that he himself is seised of the manor aforesaid to which the advowson of the church of the vill pertains etc. and for the reason that it pertains to him Michael to present to the church etc. the prior unlawfully disturbs him. Whereupon he says that he is injured and has damages to the value of one hundred pounds. And thereof he produces suit etc.

And the prior by his attorney comes and defends tort and force when etc. And he says that he ought not to answer him thereof on this writ etc.; for, he says that the church is full and consulted by the prior and his convent who held it for their own use of their own advowson etc. and it had been so for twenty six years before the purchase of the writ etc. And this he is ready to aver where and when etc. And he proffers a charter under the name of Reynold the ancestor of Michael which witnesses that Reynold with the consent of his wife and her heirs for the safety of the souls of their fathers

¹ *Herle, C, Q.*

² *Om. qi heir etc. C, Q.*

³ *Om. qe se . . . auxi, C, Q;*

Ins. et, C, Q.

⁴ St. Cleer is three miles north-west of St. Liskeard, and Rosecradock is now in the parish of St. Cleer.

BEREFORD, C.J., prayed the serjeants that the exception should be waived, and that they would make further answer.

Huntingdon. Whereas the writ says that the church is void we tell you that it was full on the day of the purchase of the writ and twenty years before then, and this by the deed of their ancestor whose heir they are. (And he put before the Court a deed and also a fine which was levied etc. and also a letter from the bishop of Exeter showing how the church had been appropriated to the prior.) We ask judgment of the writ.

Hengham. Void. Ready are we to aver [when and] where we ought.

Therefore a letter was written to the bishop of Exeter that he enquire of the plenarty of the church aforesaid.

Note from the Record (*continued*).

and mothers and their ancestors gave and with his charter confirmed the advowson of the aforesaid church with all the demesne of the same church etc. to the hospital and the brethren there serving God. He proffers also a part of a fine ¹ levied in the court of king Hen. III. at St. Bride's London on the quindene of Easter 23 Hen. III. before Robert of Lexinton and his fellow justices between one Terry de Nuys (*Nussa*) then prior of the hospital etc. plaintiff and Ingram of Bray and Beatrice his wife impediend of the advowson of the church aforesaid whereupon it was pleaded between them etc. to wit, that Ingram and Beatrice acknowledged the advowson to be the right of the prior and brethren of the hospital and remised and quitclaimed it of him and the heirs of Beatrice to the prior and his successors and the brethren for ever etc. He proffers also certain letters of P. by the grace of God lately bishop of Exeter, diocesan of the place etc. who appropriated the house to the prior and brethren and holy house of the hospital of Jerusalem and by pontifical authority granted that it should be converted to their own and the pious uses of the same house and converted it to be possessed by them for ever, which letters witness this. And because cognisance of such a cause belongs to the ecclesiastical forum an order is sent to the bishop of Exeter the diocesan of the place etc. that, those who ought to be assembled having been assembled before him, he diligently enquire if the aforesaid church be vacant or not, and if it be not vacant etc. of whom and on whose presentment and from what time it has been full. And what he shall ascertain thereof he make manifest to the justices here distinctly and openly by his letters patent etc. on the octave of the Holy Trinity.²

¹ The reference to the foot of this fine is *Feet of Fines, Case 31, File 3, No. 30*.

² The result of the proceedings was that the clerk whom the prior had insti-

tuted on 2 October 1310 was allowed to remain in possession. See Hingeston-Randolph's *Register of Walter de Stapeldon*, p. 248.

23. DAUMORY *v.* HOCCLIVE.I.¹

Ou statut marchant desturba l'attornement etc.

Un C. porta le *quid iuris clamat* vers Richard de Hockeley qe vient en court.

Hervy. Quei dreit clamez vous en un mies e une carué de terre en K. ?

Herle. Sire, fee e dreit joint ove Alice nostre femme du doun Adam Seyger ; e demandoms jugement etc.

Malm. Terme le jour de la conissance fete, prest etc.

Herle. A ceo ne poez estre partie sanz le conissour.

Ber. Serreit ceo *quid iuris clamat* suffisant foundement a trier franc tenement ? *quasi diceret*, non.

Hervy a Malm. Enparlez, e me'tez en certain coment terme etc.

Malm. Vous dioms qe Neel de C. qe nous conust ceux tenemenz fut obligé a une Emme en l'estatut marchant, par quei ele suyt de avoir ceux tenemenz tanke la dette fust levé, la quele M. granta sun estat durant le temps a cestui R.

Hervi. Ore estes vous contrarie a ceo qe vous avez primes dit, qar par tenir² statut marchaund n'est pas a tenir a terme des aunz, einz est franc tenement.

Beref. Jeo ne vey mie par nule lei, qe la ou il ne puet avoir la garantie s'il soit enpledé, q'il deive par nule conissance attorner etc.

Malm. Nous dioms qe Adam Seiger fut seisi de ceux tenemenz qe hors de sa seisine enfeffa Neel de C. e ses heirs par ceste chartre dount la date fust du temps le roy E. pere cestui roy xxvj, e qe pus teu temps Adam rien n'avoit en mesme les tenemenz par quei il poeit feffement faire, prest del averer. Et demandoms jugement si attorner ne deivent.

Herle. Ou est Neel ? qe puet estre partie a tiel averement, qar si ilui fust nous lui deisoms altre chose, qar jeo le die com *Will.*

Herle q'il n'avoit unques altre chose qe terme de vie.

¹ From Y (fol. 207 v°).

² For 'a tenir par' *subs.* par tenir, MS.

23. DAUMORY *v.* HOCCLIVE.

I.

A case in which a statute merchant interferes with attornment.

One [Robert Daumory] brought the *quid iuris clamat* against Richard of [Hocclive] who came into court.

STANTON, J. What right do you claim in one messuage and a carucate of land in [Thornborough] ?

Herle. Sir, fee and right jointly with [Joan] our wife of the gift of Adam Syger ; and we ask judgment etc.

Malberthorpe. [You held] a term on the day when the cognisance was made [to Robert]. Ready are we etc.

Herle. To that you cannot be a party without [Neal] the conusor.

BEREFORD, C.J. Would this *quid iuris clamat* be a sufficient foundation for trying the freehold ? I think not.

STANTON, J., to Malberthorpe. Imparl and state certainly how the term etc.

Malberthorpe. We tell you that Neal [de la Sale] who acknowledged these tenements to us was bound to one Emma [for a certain sum] by the statute merchant, whereupon she sued to have the tenements until the debt should be raised ; and this [Emma] granted her estate during the term to this Richard.

STANTON, J. That is contrary to what you first said, for holding by statute merchant is not holding for a term of years but is frank-tenement.

BEREFORD, C.J. I do not think that by any law a man ought to attorn on a cognisance by fine where he cannot have warranty if he be impleaded.

Malberthorpe. We say that Adam Syger was seised of these tenements, and he out of his seisin enfeoffed Neal [de la Sale] and his heirs by this charter, whereof the date is of the time of king Edward the father of this king in the twenty-fifth year ; and that after that time Adam had nothing in the same tenements by which he could make a feoffment. Ready are we to aver it, and we ask judgment if they ought not to attorn.

Herle. Where is Neal ? for he might be a party to this averment. If he were here we would say something else to him ; for I say the same as [Sir] William.¹

[STANTON, J.] Richard never had anything but a term for life.

¹ Herle seems to be referring to the last speech of the Chief Justice.

Malm. Vous n'aviez qe l'estat M. Et veez icy vostre fet par endenture fet a M. qe ceo tesmoigne. (Et mist le fet a la court.)

Beref. Quant tenemenz sunt livez par forme de statut al creanceur il n'ad nul certeyn temps nomé.

Malm. Sire, la dette est en certain e les tenemenz serront livez par certain estent, e issi par acounte puet homme saver la certineté de temps.

Et postea dies datus est partibus etc.

II.¹

Un Willem porta un *quid iuris clamat* vers un H. qe clama fee e dreit et franc tenement par *Herle*.

Pass. De qi doun ou coment ?

Herle. De doun un Adam Figer ; (et mist avaunt une chartre qe tesmoigne le feffement a H. et a Johanne sa femme a aver et tenir a H. et a Johanne sa femme et as heirs H.) Jugement si attourner devons.

Hunt. Vous dioms qe jour de la conissaunce fet forsqe a terme de viij aunz. Prest etc.

Herle. A tiel averrement ne devez estre resceu, qe ceo serreit a trier l'estat le conisour qe n'est pas partie, et auxi encountre le fet qe nous mettoms avaunt qe testmoigne nous aver fee et dreit.

Pass. Nous vous dirroms la verité de fet, et le fee et le dreit reposent en la persone Neel qe conust jour de la conisaunce fet, et pus Emme suyt l'estatut marchaund vers lui en qi mayns qe les tenemenz devignent il demurrent chargez, et issint Emme fut seisi *secundum statutum predictum*, et lessa tiel estat a Henri. Et pus vint Neel et conust a Henri *ut supra*, et qe Henri n'avoit qe a terme de viij aunz et ore lui avez conu fraunctenement.

Pass. Sire, en viij aunz put la dette estre levé et les tenemenz par estente et pur ceo demies nous a terme de viij aunz.

Fut le cas tiel qe Adam Figer fut en ascone temps seisi des tenemenz dont la conisaunce est fait qe fut allegé a Emme *ut supra* et aliena a Neel par sa chartre. Neel seisi des tenemenz. Emme suyt par statut

¹ From *M*

Malberthorpe. You have [Emma's] estate only. See here your deed made by indenture to [Emma] which witnesses this. (And he produced the deed to the court.)

BEREFORD, C.J. When tenements are delivered by the form of the statute to a creditor, no certain period is named.

Malberthorpe. Sir, the debt is certain, and the tenements are delivered by an extent which is certain; and so by reckoning a man can know with certainty the period.

Afterwards a day was given to the parties.

II.

One [Robert] brought a *quid iuris clamat* against one [Richard] who claimed fee and right and frank tenement by *Herle*.

Passeley. Of whose gift and how?

Herle. Of the gift of one Adam Syger; (and he put forward a charter which witnessed the feoffment to [Richard] and Joan his wife to have and to hold to [Richard] and Joan and the heirs of [Richard].) We ask judgment if we ought to attorn.

Huntingdon. We tell you that on the day the acknowledgment was made you held for a term of eight years only. Ready etc.

Herle. To such an averment you ought not to be received, for that would be to try the estate of the conusor who is not a party, and it would be against the deed which we put forward and which witnesses that we have fee and right.

Passeley. We will tell you the truth about the deed. The fee and the right reposed in the person of Neal who acknowledged the tenements on the day when the cognisance was made. Then Emma sued the statute merchant against him, and when the tenements had come into her hands, they remained charged; and so Emma was seised according to the statute aforesaid, and leased her estate to [Richard]. Then came Neal and acknowledged the tenements to [Robert] as above stated: and [Richard then] had a term of eight years only, [whereas he] now has acknowledged frank tenement.¹

Passeley. Sir, the debt could have been levied in eight years and the tenements were [delivered] by extent; and by that demise [you hold of] us for a term of eight years.

The case was this. Adam Siger was sometime seised of the tenements whereof the cognisance was made to [Robert] as alleged above. Adam alienated to Neal by his charter. Neal was seised of the tenements. Emma sued by statute against Neal and recovered and

¹ Apparently a short speech has been omitted.

vers Neel et recoveri, et pus lessa son estat a Henri vers qi Willem porte ceste *quid iuris clamat*. Pus Adam Figer qe nul estat avoit fit a Henri une chartre *ut supra*, la quele Henri mist avaunt en court etc. Vint Neel et conust etc. a Willem. W. suyt le *quid iuris clamat* etc. *ut supra*.

III.¹

Quid iuris clamat vers tenaunt a terme dez aunz ou il clama fee.

Neel conust lez tenemenz contenuz en le bref estre le dreit Robert lez quex un Richard Cole tynt de ly a terme de x aunz del heritage le dit Neel. Robert suyt le *quid iuris clamat* vers Nichole² qe vint en court et clama fee par resoun de un feffement un Adam Segg fet a ly e a Agnes. Et mist avaunt fet qe ceo téstmoigna.

Malm. Neel fut seisi dez tenementz avaunt diz en soun demene cum de fee, issint qe une Eve suyt vers E. par statut de marchauns e recovery xx mars dount lez dites tenemenz furent livreiz tauntqe soun argent fut levé, la quele Eve soun estat lessa a Richard e issi n'ad il q'a terme de x aunz. Et veyez ci le fet Richard endenté qe ceo testmoigne.

Ricd. Ut prius.

Malm. Nous dirroms la verité. Adam Segg' enfeffa Neel des tenemenz avaunt ditz en l'an le roi qe morst est xxv e vostre chartre est de la date du roy q'ore est ij, donques puis le feffement qe Adam fit a Neel, Adam n'avoit rien issint q'il poeit feffement fere a Richard e ceo voloms averrer.

Et predictis rationibus non obstantibus dictum fuit Ricardo quod haberet uxorem hic propter coniunctum feoffamentum.

IV.³

Quid iuris clamat ou dit fut q'il n'avoit qe terme.

Une femme graunta la reversion de certeinz tenemenz qe un A. tint a terme des aunz a un B., qe vint en court et dit q'il ne dut aturner, qe la ou il suppose par son bref, q'il tint a terme de xij aunz, il dit q'il avoit estat en les tenemenz par statut liveré etc. taunt qe il averoit une sonme de deners, par quei fut agardé par la court q'il ne se dut aturner par un tel bref, pur ceo qe le bref varie de le conisaunce etc.

¹ From *P*.

² An error for 'Richard.'

³ From *P*. See note opposite.

then leased her estate to [Richard] against whom [Robert] brings this *quid iuris clamat*. Then Adam Siger who had no estate made a charter [to Richard] as above stated, which charter Richard produced in court. Neal came and acknowledged etc. to [Robert; and Robert] sued the *quid iuris clamat* etc. as above.

III.

A *quid iuris clamat* against a tenant for a term of years who claimed fee.

Neal acknowledged the tenements contained in the writ to be the right of Robert, which tenements one Richard [of Hocclive] held of him for a term of [eleven] years of the inheritance of the said Neal. Robert sued the *quid iuris clamat* against [Richard], who came into court and claimed fee by reason of a feoffment by one Adam Syger made to him and Joan. And he put forward a deed which witnessed this.

Malberthorpe. Neal was seized of the aforesaid tenements in his demesne as of fee. One [Emma] sued against [Neal] by the statute merchant and recovered twenty marks, whereupon the said tenements were delivered to her until her money should be levied. This [Emma] leased her estate to Richard and so he has only a term of [eleven] years. And see here the deed indented of Richard which witnesses thus.

Richard as before.

Malberthorpe. We will tell you the truth. Adam Syger enfeoffed Neal of the tenements aforesaid in the year 25 Edw. I., and your charter is of the date of 2 Edw. II. Then after the feoffment which Adam made to Neal, Adam had nothing by which he could make a feoffment to Richard; and that we wish to aver.

And notwithstanding the arguments aforesaid Richard was told to have his wife here on account of the joint feoffment.

IV.¹

A woman granted to one B. the reversion of certain tenements which one A. held for a term of years. [A.] came into court and said that he ought not to attorn; for whereas [B.] supposes by his writ that he holds for a term of twelve years, he, A., says himself that he had an estate in the tenements delivered to him by the statute etc., until he had thereout a certain sum of money. Whereupon it was awarded by the court that he ought not to attorn on such a writ because the writ varied from the acknowledgment etc.²

¹ This brief note is not found in the other manuscripts. It seems, however, to have been suggested by this case of *Daumory v. Hocclive*. The French head-note is unsatisfactory.

² This award is not in accordance with the record of the case of *Daumory v. Hocclive* on p. 186.

Note from the Record.

De Banco Rolls, Easter, 4 Edw. II. (No. 185), r. 29, Bucks.

Richard of Hocclive in mercy for several defaults.

The sheriff was ordered to cause to come here at this day the aforesaid Richard to acknowledge what right he claims in one messuage and two virgates of land in Thornburwe which Neal de la Sale of St. Albans in court here granted to Robert Danmory as those which Richard holds for a term of eleven years by a fine here thereof between them made etc. And now came as well Richard as Robert. And Richard being asked what right he claims etc. says that he claims right and fee in the tenements by the feoffment of one Adam Syger of Shypedham who enfeoffed Richard and one Joan the wife of Richard thereof to hold to Richard and Joan and the heirs of Richard for ever etc. by the charter of Adam which he proffers and which witnesses this etc. And the date of this charter is [15 December 1308] the Sunday next after the feast of the Conception of the Blessed Mary 2 Ed. II.

And Robert says that in truth Adam Syger was lately seised of the tenements who of them enfeoffed Neal to hold to him and his heirs etc. And he says that afterwards one Emma who was the widow of John of Trypaty, to whom Adam Syger bound himself before that feoffment in twenty marks according to the form of the statute of merchants¹ etc., sued a writ for having

24. PLESELE *v.* NEUTON.²

Ou reles e quitance fist estat en fee as tenans en dowere, e fut hors de court sanz especialté, ne barre mie fin subsequent.

Un G. porta sun *quid iuris clamat* vers J. e M. sa femme a conustre quel dreit il cleiment en un mees e une carué de terre ove les appurtenaunces en N. les queux il tiendront de W. le fiz Ricard com le dower M., e le quel Willem granta la reversion a G.

Herle. J. e M. cleiment fee e dreit par la resoun qe eux porterent cienz un bref de garantie de chartre vers Ricard pere W. devant Sire Rauf de Hengham e ces compaignons l'an etc. e conust les tenemenz estre le dreit Johan, e ceo relessa e quiteclama a Johan e Maude e les heirs J. de lui e de ses heirs. Et estre ceo granta de garaunter les avantditz tenemenz a J. e M. e les heirs J. encontre touz hommes a touz jours. Et demandoms jugement si attorner devoms. (E mist avant fin qe ceo testmoigne.)

¹ Statutum Mercatorum, 13 Edw. II.
this case from *A*, *B*, *D*, *P*, *T* appear in Vol. IV. pp. 52-6, where a note from the record is also printed.

² From *Y* (fo. 207, r°). Reports of

Note from the Record (*continued*).

seisin of the lands and tenements which belonged to Adam on the day of the recognition of the debt; and thereby the tenements from out of (*extra*) the seisin of Neal were delivered to Emma to hold according to the form of the statute etc. until she should levy the debt therefrom. And this Emma demised the estate which she had in the tenements to Richard of Hocclyve so that after the term of the statute had elapsed, the tenements ought to revert to Neal. And he proffers the charter of Adam made to Neal of the aforesaid tenements of which the date is [6 October 1297] the day of St. Faith the Virgin 25 Ed. I. and also a certain writing by which Emma demised the estate which she had in the tenements by reason of the statute etc. to Richard as is aforesaid, of which the date is 1 Ed. II. And since by the charter of Adam by which Richard claims fee etc. it is manifest that that charter was made long after the feoffment to Neal and since he is ready to aver that Adam after he had enfeoffed Neal thereof, never afterwards had anything in the tenements so that he could make any estate to Richard and Joan his wife etc., he asks judgment if by the charter which Richard proffers etc. this attornment ought in this case to be retarded etc.

A day is given them here on the morrow of St. John the Baptist in the same state as now etc. Afterwards at that day the parties came and a day is given them here on the quindene of St. Michael etc. in the same state as now etc.

24. PLESELE *v.* SPALDING.¹

One [William of Plesele] brought his *quid iuris clamat* against [William of Newton and Christian] his wife to acknowledge what right they claim in a messuage and a carucate of land with the appurtenances in [B.] which they held of William the son of Richard as the dower of [Christian], and whereof this William [the son of Richard] granted the reversion to [William of Plesele].

Herle. [William and Christian] claim fee and right, because they brought here a writ of warranty of charter against Richard the father of William before Sir Ralph of Hengham and his fellows in the year etc., and Richard acknowledged the tenements to be the right of [William] and these he released and quitclaimed to [William and Christian] and the heirs of [William] from himself and his heirs. Moreover he granted that he would warrant the aforesaid tenements to [William and Christian] and the heirs of [William] against all men for ever. We ask judgment if we ought to attorn. (And he put forward a fine which witnessed this.)

¹ The French headnote is corrupt and will not bear translation. The proper names are corrected by the record, for reference to which see note opposite.

Spalding is the name of the first tenant on the record. Another report of this case appears in the Old Edition on p. 54.

Mugg. Cele fin a nous ne deit estre barre, car vous dioms qe le dit R. lunge temps devant qe cele fin se leva si granta la reversion de ceux tenemenz a W. son fiz hors de court par quei graunt M. se attorna, issi qe R. rien ne out en les tenemenz le jour qe la fin se leva e demandoms jugement etc.

Bere. Quei avez de ceo ?

Mugg. Nous voloms averrer par bon pays.

Herle. Nous avoms mis fin a la court qe tesmoigne nostre estat, e eux rien ne ount qe prove lour dit. Demandoms jugement coment nous devons departir.

Mugg. Si J. nous eust fet chartre e fut ars ou perdu, jeo entenke qe nous serrioms bien resceu a averrer le graunt par bon pays.

Beref. Si R. eust relessé e quiteclamé par fet hors de court a J. e M. e l'aquitance fut perdue serreient eux resceux par lour dit a barrer vous del attornement ? *quasi diceret*, noun, *ergo* del autre part.

Scrop. Si jeo ey liveré de seisin sanz chartre, jeo averay assez bon estat de franc tenement, mes tut ey jeo chartre sanz liveré de seisin, ceo ne me dorra nul estat de franc tenement. Auxi dy jeo par de cea, coment qe nous n'avoms mie chartre nous voloms averrer le grant e l'attornement etc.

Ber. Quei responez vous qe estes fiz e heir R. a cele parole qe est en la fin 'warantizabunt' ?

Hervi. Vous alleggez grant e attornement hors de court e rien n'avez en poinge qe prove vostre dit, ne rien ne savez dire encountre la fin, si agarde la court qe J. e M. aillent adieu de ceste attornement e G. preigne rien etc.

25. BOMUND *v.* BOMUND.¹

I.

Femme tenante en la taillé ne s'attorna pas.

Un A. porta le *quid iuris clamat* vers Isabel qe fu femme C. a conustre quel dreit ele cleime en le maner de L. ove les appurtenances, le quel un G. ad conu de dreit a F.

Herle. Adam le Blund granta ceu maner au ditz C. e Isabel sa femme, e ceo lour rendist en ceste court a avoir e tenir a eux e les heirs de lour corps engendrez e s'il deviassent sanz heir de lour corps, qe les tenemenz

¹ From Y (fol. 207 v°).

Miggeley. This fine ought not to bar us ; for we tell you that the said Richard a long time before this fine was levied granted the reversion of these tenements out of court to William his son ; and upon this grant [William¹ and Christian] attorned so that Richard had nothing in the tenements on the day when the fine was levied. We ask judgment.

BEREFORD, C.J. What have you of that ?

Miggeley. We will aver it by the country.

Herle. We have produced a fine to the court which witnesses our estate, and they have nothing which proves what they say. We ask judgment that we may withdraw [without attornment].

Miggeley. If [Richard the father] had made a charter to us and it were burnt or lost, I think that we should certainly be received to aver the grant by the country.

BEREFORD, C.J. If [Richard] had released and quit-claimed by a deed out of court to [William and Christian], and the acquittance were lost, would they be received on their own statement to bar you from the attornment ? I think not. So in this case.

Scrope. If I have livery of seisin without charter, I shall have a sufficiently good estate of freehold. But if I have a charter without livery of seisin, it will not give me an estate of freehold. So I say in this case, although we have no charter we wish to aver the grant and the attornment.

BEREFORD, C.J. What do you who are the son and heir of Richard answer to this word in the fine, ' warrantizabunt ' ?

STANTON, J. You allege grant and confirmation out of court, and have nothing in your hand which proves your statement ; nor can you say anything against the fine, so the court awards that [William and Christian] go adieu of this attornment, and that [William of Plesele] take nothing etc.

25. BOMUND v. BOMUND.

I.

A case in which a woman tenant in tail did not attorn.

One [Thomas] brought the *quid iuris clamat* against [Alice] the widow of [William] to acknowledge what right she claimed in the manor of L. with the appurtenances, of which one [John] has acknowledged the right to [Thomas].

Herle. [One William] granted this manor to the said [William] and [Alice] his wife and rendered it to them in this court to have and to hold to them and the heirs of their bodies begotten, and so that if they

¹ For the attornment of the husband see the note from the record.

remeindront a cestui G. par fin en ceste cort etc. (Et mist la partie de la fin a la cort qe ceo tesmoigna e demanda jugement si de tiel estat deive attorner.)

Hengham. Vous n'avez qe terme de vie, qar G. vostre baron qe fut partie au doun est mort sanz heir de son corps etc. par quei le dreit etc. reposa en la persone nostre conissour le jour de la conissance etc., e issi en nostre persone etc. E demandoms jugement etc.

Ber. Ceste fin tesmoigne qe le maner fut doné a G. e Isabel sa femme e les heirs de lour deus corps engendrez, e issi ad Isabel fee taillé, et s'il deviassent sanz etc. qe les tenemenz remeindront a vostre conissour. E ne veez vous mie qe Isabel est uncore en pleine vie e si en cort. Coment donqe puet il avoir le dreit vivant Isabel? *quasi diceret*, ceo serroit encontre la forme de doun.

Et consideratum fuit quod non attornaret.

Mes avez meinz sagement fet par vostre menement car ele ore fra waste vente e destruccion.

Et sic nota qe tenant en fee taillé ne se attornera mie ne ne serra chargé de waste etc.

II.¹

Quid iuris clamat porté vers tenant en fee taillé. Et non attornait.

La reversioun de certeyn tenemenz qe une femme teynt en fee taillé fut granté a un homme. Il sewyt le *quid iuris clamat* hors de la note. La femme vynt en court et demaundé fut quel dreit ele clama. La femme dit qe soun baroun et ly purchasoint ceux tenemenz jointement² a eux et lour heirz de lour cors engendrez,³ et s'il devyassent sanz heir etc. qe lez tenemenz retournassent⁴ al donour⁵ et a ses heirs. Et nous vous dioms qe nostre baroun si est mort sanz isseu etc.

Mugg. Donqe prioms nous qe ele se attourne, car la possibilité de la taillé⁶ est esteynt.

Berr. Vous dites mal, car ele ad⁷ fee et dreit solom la taillé issi qe riens ne deit revertir⁸ ne remayndre jesqe apres son deces. Et d'autrepart ele purra fere wast e aliener sanz ceo qe vous pussez

¹ From *C* collated with *D*, *Q*, and *T*. ² *Om.* jointement, *D*, *T*. ³ issantz, *D*, *T*. ⁴ remaingrent, *D*, remeign', *T*. ⁵ conissour, *D*, *T*. ⁶ *Ins.* par la mort le baron q'est mort sanz issue, *D*, *T*. ⁷ *Ins.* tote sa vie, *D*, *T*.
⁸ retourner, *D*, *T*.

should die without an heir of their bodies, the tenements should remain to this [William], by a fine in this court. (And he produced one part of the fine to the court, which witnessed this, and asked judgment if she ought to attorn for such an estate.)

Hengham. You have only term for life, for [William] your husband, who was a party to the gift, died without an heir of his body etc. and therefore the right etc. reposed in the person of the conusor on the day when the cognisance was made; and so it is in our person. We ask judgment.

BEREFORD, C.J. This fine witnesses that the manor was given to [William] and [Alice] his wife, and the heirs of their two bodies begotten, and so [Alice] has fee tail; and that if they should die without issue etc. the tenements should remain to your conusor. Do you not see that [Alice] is still alive and in court?¹ How could the conusor have the right in the lifetime of [Alice]? Why, it would be against the form of the gift.

It was awarded that she should not attorn.

But you have not done wisely by your proceeding, for now she will make waste sale and destruction.¹

So note. A tenant in fee tail will not attorn nor will he be charged with waste etc.

II.

A *quid iuris clamat* was brought against a tenant in fee tail. She did not attorn.

The reversion of certain tenements which a woman held in fee tail was granted to a man. He sued the *quid iuris clamat* out of the note. The woman came into court and was asked what right she claimed. The woman said that her husband and she purchased those tenements jointly to them and their heirs of their bodies begotten, and so that if they should die without an heir etc. that the tenements should return to the donor² and his heirs. And we tell you that our husband died without issue etc.

Miggeley. Then we pray that she attorn, for the possibility of issue under the limitation is extinct.

BEREFORD, C.J. You are wrong; for she has fee and right according to the limitation, so that nothing ought to revert or remain until after her decease. Besides she can commit waste and can alienate without

¹ This seems to be an observation made by the Chief Justice after judgment has been delivered.

² The record shows that the remainder after the estate tail was to the heirs of the husband.

ren recoveri tute sa vie, issint qe soun estat est tut autre qe le grant ne veot.

Et non attornaut.

Note from the Record.

De Banco Rolls, Easter, 4 Edw. II. (No. 185), r. 52, Suffolk.

Alice the widow of William Bomund is in mercy for several defaults.

The sheriff was ordered that he cause Alice to come here at this day to acknowledge what right she claimed in one messuage one hundred and four acres of land two and a half acres of meadow three acres of wood and twenty nine shillings and fourpence of rent and two parts of a messuage in Halsworth Bromfeld Walpol Cokeleye Chedestane Blytheburgh¹ and Stone which John the son of John Bomund granted here to Thomas Bomund of Specteshale by fine etc.

And now came as well Thomas as Alice in their own persons. And Alice being asked by the justices what right she claimed in the tenements says that lately in the court of king Edw. I. to wit on the morrow of the Ascension 32 Edw. I. at York before Ralph of Hengham and his fellow justices of that king etc. a certain fine² was levied between William Bomund sometime the husband of Alice and Alice as plaintiffs and William of Byskele deforciant of five messuages one hundred acres of land seven acres of meadow three acres of wood ten acres of pasture twenty three shillings and fourpence of rent and two parts of a messuage in Halesworth Brumfeld

26. VAUS *v.* BABRAHAM.³

Robert de Vaus porta soun bref *quid iuris clamat* vers J. de Wyburgham et Margerie sa femme a saver moun quel dreit etc. en un mees etc. le quel mees Maude seor et heir Richard le premer baron Margerie conust estre le dreit Richard.

Toud. Richard soun premer baroun et ly purchacerent les ij parties de mesme le mees de un Robert et C. sa femme a eux et a lour heirs ensemble ov la 3^{ce} partie qe une tele tint en dowere, la quele s'atourna e puis rendi soun estat. Et cel estat ad continué jeques en cea. (Et mist avaunt la chartre et l'escrit qe ceo testmoignerent.) Et demaundoms jugement si ele deit atourner.

Frisk. Tel estat ne put ele clamer, qe avaunt ces houres une fyn se leva entre Richard soun premer baroun e mesme ceste Maude pleygnaunz et lez avaundiz R. et C. deforceours en la court le roy certeyn jour etc. ou Robert e C. conisoient lez tenemenz estre le dreit

¹ Bramfield, Walpole, Cookley, Cheddiston and Blythburgh are all near Halesworth in N.-E. Suffolk.

² *Feet of Fines*, Case 216, File 46, No. 14.

³ From *P.* A report of this case from *A*, collated with *B*, *D*, *L*, appears in Vol. I. at p. 14, where a note from the record will also be found.

your being able to recover anything during all her life, so that her estate is altogether different from what the [grantee] says.

She did not attorn.

Note from the Record (*continued*).

Walpol Cokeleye and Chedestane by which fine William Bomund acknowledged the tenements to be the right of William of Byskele. And for this acknowledgment etc. William of Byskele granted the tenements to William and Alice and rendered the same to them in court to have and to hold to William and Alice and the heirs whom William Bomund should beget of the body of Alice of the chief lords of that fee by the services which belong to the tenements for ever. And if it should happen that William Bomund should die without an heir of the body of Alice begotten, then after the decease of William and Alice the tenements should remain entirely to the right heirs of William Bomund to be held of the chief lords etc. And she proffers a part of the fine which witnesses this etc. And she says that she holds no tenements in the towns of Blytheburgh and Stone, but that all the tenements which she now holds are contained in the fine, and she holds them to her and the heirs of her body begotten according to the form of the fine etc. Whereupon she asks judgment if she by virtue of the acknowledgment of John the son of John ought to attorn thereof to Thomas. And Thomas cannot deny this. Therefore let Alice for the present go thereof without day etc.

26. VAUS *v.* BABRAHAM.¹

Robert de Vaux brought his writ of *quid iuris clamat* against [Alan of Babraham] and Margaret his wife to know what right etc. they claim in one messuage etc. which Maud the sister and heir of Richard the first husband of Margaret acknowledged to be the right of [Robert].

Toudeby. Richard her first husband and she purchased two parts of the same messuage of one Robert and Christian his wife to them and their heirs together with the third part which one [Helewise] held in dower, who attorned herself and afterwards rendered her estate. And that estate have they continued till now. (They produced the charter and writing which witnessed thus.) We ask judgment if she ought to attorn.

Friskeny. Such an estate she cannot claim, for heretofore a fine was levied between Richard her first husband and this same [Margaret] as plaintiffs and the aforesaid Robert and Christian as deforciant² in the king's court on a certain day etc., and Robert and Christian

¹ For the reference to the record of warranty of charter Robert and Christian ought to have been called see note 3 opposite.

² As the fine was levied on a writ impediens.

Richard com ceo q'il avoit de lour doun a aver et a tenir a Richard et Maude et a lez heirs Richard, et issi n'ad ele fraunc tenement. Jugement si ele pousse ore clamer fee et si ele ne deive aturner.

Toud. Et nous jugement, depus qe vous ne poez dedire qe nous entrames par la chartre qe nous doune fee et qe est de eygné dato qe n'est la fyn, e cel estat avoms continué saunz estre chaungé, e nous unques venimes en court ne ne fuimes examiné de court cum covendra si nostre premer estat dut estre defet, si par mi la fyn puisez nous de nostre premer estat ouster, e si nous devoms aturner.

Frisk. E nous jugement, depuis qe nous avoms mys avaunt fyn en court a quele vous futes partie e qe testmoigne qe vous ne resutes autre estat si noun a terme de vie, la quele fin est de record e jugement de cōurt, si vous puisez par une chartre hors de court fete fee clamer.

Herle. Veyrs est qe une fyn se leva sur bref de gërarrantie de chartre, e sur ceste chose qe testmoigne fee, quel estat nous avoms continué saunz interrompcioun avaunt la fyn, par quei nous demaundoms jugement, si par mi fyn qe n'est pas acordaunt a la chartre, nous poussez ouster de nostre premer estat.

E puis fut agardé q'il alassent saunz jour etc. Et Robert en la mercy.

27. SWABY *v.* FARFORD.I.¹

Quid iuris clamat ou lez tenementz furent lessez a un R. et A. sa femme, et celui a qi la reversioun apent dona graunta et conferma a R. et a ses heirs a touz jours ; par quei fust agardé qe A. ne s'atourne point etc.

Un Aleyn² lessa certain tenemenz³ a un Robert et Alice sa femme a terme de lour⁴ vies ; pus Aleyn² dona granta et conferma mesme les tenemenz par sa chartre⁵ al avantdite R. a tenir a R.⁶ et a ses heirs

¹ From *M* collated with *B*, *G*, and *R*, and save the last speech with *P*. The head-note is from *B*. Other reports from *L* and *Y* will be found, with a note from the record, in Vol. IV. at pp. 18-20. ² Willem, *M*. ³ *Om.* certain tenemenz, *B*, *G*. ⁴ *Ins.* deux, *B*, *G*, *P*. ⁵ *Om.* par sa chartre, *B*, *G*, *R*. ⁶ *Om.* a tenir a R., *B*, *G*, *P*, *R*.

acknowledged the tenements to be the right of Richard as those which Richard and Margaret have of their gift to have and to hold to Richard and [Margaret] and the heirs of Richard; and so she has franktenement¹ [only]. We ask judgment if she can now claim fee and if she ought not to attorn.

Toudeby. Seeing that you cannot deny that we entered by the charter which gives us fee and is of an earlier date than is the fine; and that we have continued that estate without its being changed; and that we never came into court nor were we examined by the court as would be necessary if our first estate is to be defeated, we ask judgment if by the fine you can oust us from our first estate, and if we ought to attorn.

Friskenev. And since we have produced a fine in court to which you were a party, and which witnesses that you received no other estate than term for life, and since this fine is of record and is a judgment of the court, we ask judgment if you can by a charter made out of court claim fee.

Herle. True it is that a fine² was levied upon a writ of warranty of charter, [but it was] upon matter which witnesses [our] fee; and that estate in fee we have continued without interruption from before the date of the fine. Therefore we ask judgment if by a fine which is not in accordance with the charter you can oust us from our first estate.

Then it was awarded that Alan and Margaret go without day and that Robert be in mercy.

27. SWABY *v.* FARFORD.

I.³

A case of *quid iuris clamat* in which the tenements had been leased to one Richard and Gillian his wife, and he to whom the reversion belonged gave granted and confirmed to Richard and his heirs for ever. Therefore it was awarded that Gillian should not attorn etc.

One Alan leased certain tenements to one [Richard and Gillian] his wife for the term of their two lives. Then Alan by his charter gave granted and confirmed the same tenements to the aforesaid Richard

¹ The report says that she has not frank tenement, but the context shows that she had. Probably the word 'qe' has been omitted.

² This fine supposed a precedent gift and the scisin of the plaintiffs.

As to this see the report on p. 15 of Vol. I.

³ This appears in the Old Edition on p. 102. The proper names are corrected by the record, of which a note appears in Vol. IV. at p. 20.

a touz jour¹; mes² R. ne³ Alice ne⁴ remuerent⁵ lour primer estat. Aleyn avoit un fitz William par noun. A devia; R. avoit un fitz Johan par noun; R. morust⁶; Willem le fitz Aleyn apres la mort son pere granta⁷ mesme les tenemenz a Rauf, pur ceo q'il entendit qe la chartre qe son pere avoit fet a Robert et a ses heirs taunt com R. et Alice sa femme⁸ tenerent⁹ a terme de lour deux¹⁰ vies ne lui barreit pas de la reversioun ne ne vaudra pas¹¹ a qi il fut fet et par la resoun¹² q'il ne remuerent unques lour estat primer q'il avoint a terme de lour ij¹³ vies. Rauf a qi¹⁴ la conisance se fit suwyt le *quid iuris clamat* hors de la note etc. vers Alice qe fut la femme Robert qe tint les tenemenz a terme de sa vie par le premer lees. Ele vint en court et demaundé fut par les justices quel dreit ele clama etc. Ele dit a terme de vie. Demaundé fut de qi heritage. Ele dit del heritage Johan le fitz Robert. Demaundé fut si ele savoit¹⁵ rien dire pur quei ele ne deit attourner. Ele dit qe noun. Survynt¹⁶ Johan¹⁷ et ala¹⁸ a la barre sanz autre proces de plee.

Toud. Sire, veez cy Johan le fitz Robert qe dit qe le fee et le dreit de mesme ceux tenemenz repose en sa persone et la reversioun a lui append par la resoun qe Aleyn qe lessa mesme les tenemenz a Robert et Alice a terme de lour deux vies graunta al avandit Robert mesme les tenemenz a aver et tenir a Robert et a ses heirs, et cesti Johan est heir Robert¹⁹ issint appent a lui la reversioun, et prie q'ele ne se attourne poynt a sa desheritage et par ceo fet.²⁰

Herle. Par ceo fet ne put il avantage prendre²¹ ne estat clamer, qe il ount dit qe Robert et Alice avoint joynt estat a terme de lour deux vies, et²² de les l'avaundit Aleyn, et ceo fet fut fet a R. et a ses heirs taunt com R. et Alice tyndrent a terme de lour deux vies sanz remuement²³ de²⁴ lour estat q'il avoint a terme de vie. Jugement si par ceo fet estat purrount²⁵ clamer. Et d'autre part la chartre veot *dedi et concessi et confirmaui* en supposaut²⁶ translacioun de poessessioun²⁷ et eux unques par my la chartre estat n'avoint ne lour estat changerent. Jugement si cele chartre lour puisse valer et prioms q'ele s'attourne.

Toud. Del heure qe²⁸ vous avez conu le fet qe veot grant et con-

¹ *Om.* a touz jours, *B, G, R.* ² *Om.* mes, *B, G, R.* ³ *et, B, G, P, R.* ⁴ *Om.* ne, *B.* ⁵ *Ins.* pas, *P*; *Ins.* unques, *B, G, R.* ⁶ *devia, B, G, R.* ⁷ *Ins.* la reversioun de, *B, G, R.* ⁸ *Om.* sa femme, *B, G, P, R.* ⁹ *tyndrent, B, G.* ¹⁰ *Om.* lour deux, *B, G, R.* ¹¹ *Ins.* a eux, *B, G, R*; a celi, *P.* ¹² *pur ceo, B, G, R.* ¹³ *Om.* lour ij, *B, G, R.* ¹⁴ *Ins.* reversioun fuist graunté et, *B, G, R.* ¹⁵ *sout, B, R*; sut, *G, P.* ¹⁶ *Ins.* W. le fitz, *M.* ¹⁷ *Subs.* Robert, *M.* *Ins.* fuiz R., *B, G, P, R* ¹⁸ *Om.* e ala, *B, G, P, R.* ¹⁹ *Richard, M*; *Ins.* et, *B, G, P, R.* ²⁰ *Om.* et par ceo fet, *B, G, R.* ²¹ *avoir, B, G, R.* ²² *Om.* et, *B, G, R.* ²³ *Sic, P*; remenement, *M*; remuer, *B, G, R.* ²⁴ *Om.* de, *B, G, R* ²⁵ *poetz, B*; poet, *G, R.* ²⁶ *et suppose, B, G, R.* ²⁷ *seisine, P.* ²⁸ *Desicome, B, G, R.*

to hold to him and his heirs for ever ; but Richard and Gillian never released their first estate. Alan had a son [Thomas] by name. [Alan] died. Richard had a son [Richard] by name. Richard [the elder] died. [Thomas] the son of Alan after the death of [Alan] his father granted the reversion of the same tenements to one [Simon] because he thought that the charter which his father had made to [Richard] and his heirs, whilst Richard and [Gillian] held for the term of their lives, would not bar him from the reversion, nor would it avail them to whom it was made, since [Richard and Gillian] never released their first estate which they had for the term of their two lives. [Simon] to whom the reversion was granted and the cognisance made sued the *quid iuris clamat* out of the note etc. against [Gillian] the widow of [Richard] who held the tenements for the term of her life by the first lease. She came into court and was asked by the justices what right she claimed. She said, ‘ term of life.’ She was asked of whose inheritance. She said of the inheritance of one [Richard] the son of [Richard]. She was asked if she could state any reason why she should not attorn, and said No. This same [Richard the son of Richard] came to the bar without other process in the plea.

Toudeby. Sir, see here [Richard the son of Richard] who says that the fee and the right of the same tenements repose in his person and that the reversion belongs to him because Alan who leased these tenements to [Richard and Gillian] for the term of their two lives granted the same tenements to the aforesaid [Richard] to have and to hold to [Richard] and his heirs, and he [Richard] is the heir of [Richard] ; and so the reversion belongs to him ; and he prays that she do not attorn to his disherison upon this deed.

Herle. By this deed he can take no advantage nor claim estate ; for they have said that [Richard and Gillian] had a joint estate for the term of their two lives by the lease of the aforesaid Alan ; and this deed was made to Richard and his heirs whilst Richard and [Gillian] held for the term of their two lives, without their releasing the estate which they had for the term of their lives. We ask judgment if they can by that deed claim an estate. Besides the charter says *dedi concessi et confirmaui* and supposes transference of possession, and [Richard and Gillian] never had an estate by that charter, nor did they change their estate. We ask judgment if that charter can avail them, and we pray that she may attorn.

Toudeby. Since you have acknowledged the deed which speaks

fermement et avez conu qe le franctenement fut en la persone nostre pere al jour¹ qe ceo fet fut fet et² par le primer lesse³ dont par le *concessi et confirmaui*⁴ passa le fee et le dreit hors de la persone Haleyn qi fet ceo est⁵ qe est mis avaunt a la court en supposaut le fee et le dreit estre⁶ en la persone nostre pere par quei nous prioms q'ele ne se attourne pas, qe si nous fussoms einz et fussoms enpledé de un estrange nous vous vouchissoms⁷ a garraunt par le fet etc. ou si vous mesme portassez bref vers nous, nous vous reboteroms d'accioun par le fet etc. et prioms q'ele ne se attourne pas.

Et furent ajournez a iij simeignes de Pasche; a quel jour *Stanton*⁸ recorda la parole et dit⁹ pur ceo qe nous veoms¹⁰ qe le *concessi et confirmaui* sount¹¹ en le droit et saverunt la nature de reles et quitecleim, et par my le *concessi et confirmaui*¹² passe fee et dreit naturellement, si agarde la court qe la femme ne se attourne pas, einz veot adieu sanz jour et vous qe suvez¹³ le *quid iuris* en la mercy, pur ceo qe la court est travaillé, et pur ceo q'il avoit autre estat a terme de vie; et le *confirmaui* fut bone etc.¹⁴

II.¹⁵

* * * * *

Stant. Par ceo qe conu est de une part et de autre qe Aleyn pere Johan lessa ceus tenemenz a R. et Alice sa femme a terme de lour ij vies, et puis fit une chartre symple a Robert et cez heirs en sa seisine ov clause de garantie; par la quele tut fut le *dedi* voide le fee et le dreit passa par le *concessi et confirmaui* sicum par quitecleim q'est barre ove la clause de garrauntie et qe Robert est le fiz Aleyn, en qi le fee et le dreit repose, si agarde la court qe Alice ne s'atourne pas, eynz voyse a dieu saunz jour, et vous qe avez suy le *quid iuris clamat* en la merci etc.

¹ heure, *B, G, R.* ² *Om.* et, *P, B, R.* ³ lessour, *P.* ⁴ *Ins.* si, *B, G, R.*
⁵ *For* qi fet ceo est, *subs.* qe fit ceo fet, *B, G, R.* ⁶ *For* en supposaut . . . estre, *subs.* et se vesti, *B, G, R.* ⁷ vouch, *B, M, P*; voucheroms, *G*; vouchoms or voucheroms, *R.* ⁸ *Hervi*, *B, G, R.* ⁹ *Om.* recorda . . . dit, *P*; *om.* et dit, *P.* ¹⁰ *Om.* pur ceo . . . veoms, *B, G, R.* ¹¹ soument, *B, G.* ¹² *Om.* sount en . . . confirmaui, *R.* ¹³ portez, *B, G, R.* ¹⁴ *Om.* et pur . . . bone etc., *B, G, R.* ¹⁵ This is the text of the award of the court as reported in *P.*

of grant and confirmation and have acknowledged that by the first lease the freehold was in the person of our father on the day when this deed was made, therefore by the *concessi et confirmaui* the fee and the right passed out of the person of Alan, whose this deed is which is put before the court, and thus it is supposed that the fee and the right were vested in the person of our father. Therefore we pray that she do not attorn, for if we were 'in' and were impleaded by a stranger we should vouch you to warranty by the deed etc., and if you brought a writ against us we should rebut you by this deed. We pray that she do not attorn etc.

They were adjourned till three weeks after Easter.

At that day STANTON, J. recorded the cause and said that the *concessi et confirmaui* sounded in the right and savoured of the nature of release and quitclaim; and by *concessi et confirmaui* fee and right passes naturally. Therefore the court awards that the woman do not attorn, but go adieu without day, and do you who sue the *quid iuris* be in mercy because the court has been troubled etc.¹

II.²

STANTON, J. Whereas it has been acknowledged on both sides that Alan the father of [Thomas] leased these tenements to Richard and [Gillian] his wife for the term of their two lives, and that he afterwards made an unconditional charter with a clause of warranty to [Richard] and his heirs when Richard was seised; and by this charter although the *dedi* was void the fee and the right passed by the *concessi et confirmaui* as if by a quitclaim which with a clause of warranty is a bar, and since [Richard] is the son of [Richard], and in him the fee and the right repose, the court awards that [Gillian] do not attorn but go adieu without day, and that you who have sued the *quid iuris clamat* be in mercy.

¹ The concluding words of the French text appear to have been inserted in

error, and are therefore not translated.

² See note 15 opposite.

28. SAUNTON v. THETELTHORP.¹

Ou Sire Roger Scotir purchasa la reversion dil maner de Stannowe de C. le quel maner Jon de la Fontayne e Luce sa femme teneent a terme de xvj aunz. J. e L. vindereint en curt par le *quid iuris clamat* e conisseit q'il tyndereint ceu maner a terme de xvj aunz de qe terme v aunz sunt passez.

Hervi regarda le *quid iuris clamat* e trova le maner de Staunton en le bref.

Et pus dist *Ber.* Demandet le cirogroffer qe vint e porta la note qe varia dil *quid iuris clamat*.

Et pus dist *Ber.* au cirogroffer. Amendez le bref apres la note, et Sire Roger, venez ceinz demain e rescevez le attornement.

Notes from the Record.

I.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 284. Lines.

Roger of Scoter and Agnes his wife give half a mark for having licence to agree with John of Saunton on a plea of covenant concerning the manor of Thorgranby.² And they have their chirograph by R. of Malmethorp counter etc.

II.

Feet of Fines, Case 135, File 78, No. 25.

This is the final agreement made in the court of our lord the king at Westminster on the quindene of Easter in the fourth year of the reign of king Edward the son of king Edward before William of Bereford Lambert of Trikingham Hervey of Stanton John of Benstede and Henry le Scrop justices and other lieges of our lord the king then and there present.

29. ANON.

Quid iuris clamat porté vers tenaunt en dowere qe clama fee.

Un Aleyn graunta la reversioun dez certeynz tenemenz a un B. qe C. tint en noun de dowere. B. suyt le *quid iuris clamat* vers C. qe vint en court e clama fee. Ideo consideratum fuit quod eat sine die; et B. suyst un autre *quid iuris clamat*.

¹ From Y (fo. 207, r^o).

² This place, now called Thorganby, lies between Grimsby and Market Rasen.

28. SAUNTON *v.* THETELTHORP.¹

Sir Roger Scotre purchased the reversion of the manor of Stannowe from one C. which manor John de la Fountain² and Lucy his wife held for the term of sixteen years. John and Lucy came into court by the *quid iuris clamat* and acknowledged that they held that manor for a term of sixteen years of which five had passed.

STANTON, J. looked at the *quid iuris clamat* and found the manor of Staunton³ in the writ.

Then BEREฟอร์ด, C.J. said : Call the chirographer. He came and brought the note which differed from the *quid iuris clamat*.

Then BEREฟอร์ด, C.J. said to the chirographer : Amend the writ by the note, and do you Sir Roger come here to-morrow and receive the attornment.

Note from the Record (*continued*).

Between Roger of Scoter and Agnes his wife plaintiffs and John of Saunton deforciant of the manor of Thorgramby which Nicholas of Thetelthorp of Fenneby and Agnes his wife and Philip of Welle hold for a term of eleven years whereupon a plea of covenant was summoned between them in the same court that is to say that John acknowledged the manor to be the right of Roger and granted for himself and his heirs that the manor which Nicholas Agnes and Philip held for the term of eleven years by the demise of John on the day on which this agreement was made and which after the term to John and his heirs ought to revert should remain after the term entirely to the said Roger and Agnes his wife and the heirs of Roger To Hold of the chief lords of that fee by the services which to that manor belong. And John and his heirs will warrant the manor to Roger and Agnes his wife and the heirs of Roger against all men for ever.

29. ANON.

Quid iuris clamat brought against a tenant in dower who claimed fee.

One Alan granted the reversion of certain tenements, which C. held in name of dower, to one B. This B. sued the *quid iuris clamat* against C. who came into court and claimed fee. Therefore it was awarded that she go without day, and that B. sue another *quid iuris clamat*.

¹ This seems to be the report of proceedings in a *quid iuris clamat* ending in the engrossment of the fine of which a translation is printed at the end of the report. The record of the proceedings on the writ of *quid iuris clamat* has not been found.

² This name was probably suggested by that of Philip of Wille, one of the

tenants for life in the fine.

³ The name of the manor in the fine was Thorgranby. That of Staunton was perhaps suggested by Saunton, the name of the deforciant. It is not unlikely that the variation which gave rise to the report was in the name of the deforciant and not in that of the manor.

Herle pur C. vynt en court e dit qe avaunt cez houres B. porta un *quid iuris clamat* de mesme la note vers ly, a quel fut agardé qe nous alassoms [saunz]¹ jour. Et n'entendoms pas qe nous devons par vertue de mesme la note altrefoiz conustre.

Toud. Sire, la note est une en sey, e cel agarde qe se fit ne fut forsqe *quod eat sine die* e noun pas *quod eat quieta* Jugement si ele par cest bref ne deyve conustre e aturner.

Herle ut prius.

Ber. Aukune foiz avent qe la partie voise saunz jour, q'est doné sur le principal; en tel cas, je n'entenk mie qe la partie pusse altre foiz autel bref de mesme la nature user. Mes en cas la ou la partie est noun suy e le proces pery par negligense de la court ou de la partie, il put altrefoiz user bref de mesme la note.

Herle. Si vous agardez qe nous conisoums altre foiz e par vertue de mesme la note, *non obstante* la partie ala saunz jour, nous conustroums voluntiers etc.

Ber. Jeo dye ben, pur mei qe jeo ne voil mie croiser la note pur nule agarde qe se fit etc.

¹ Omitted in MS.

Herle for C. came into court and said that heretofore B. brought a *quid iuris clamat* against her on the same note. It was awarded that we should go without day. We do not think that we ought by virtue of this same note to make acknowledgement again.

Toudeby. Sir, the note is one and the same, but the award which was made was only 'that she go without day' and not that 'she go quit thereof.' We ask judgment if on this writ she ought not to make acknowledgement and to attorn.

Herle, as before.

BEREFORD, C.J. Sometimes it happens that the party goes without day; and this judgment is given upon the principal matter. In such a case I do not think that the [other] party can again use such a writ of the same nature. But in a case where a party is non-suited and the process fails through the negligence of the court or of the party himself, he can again use a writ issuing out of the same note.

Herle. If you award that we acknowledge again, and by virtue of the same note notwithstanding the fact that we went without day, we will acknowledge willingly.

BEREFORD, C.J. For myself, I say that I am unwilling to annul the note through any award that may be made.

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OLD EDITION.

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94	Un Willem porta son <i>breue</i> de <i>monstravit</i>	4
94	Un home port son <i>breue</i> etc. vers Thomas Grilli	21
95	Un home porta <i>breue</i> de formedon vers un tenaunt	70
95	Un home port son <i>breue</i> de dette vers un home	13
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95	Sire Johan Flemyng port un assise	85
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A writ of intrusion was brought against a tenant who said that the writ supposed that he had entered the tenements upon the abatement made after the death of the tenant's father who held them of the demandant's		
		demandant's grandfather enfeoffed the tenant's father in fee tail, and the demandant's father confirmed this gift and bound himself and his heirs to warranty by a writing which he produced. Issue of <i>non est factum</i> is joined.

HILARY TERM, 4 EDW. II.

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A man brought a <i>monstravit de compoto</i> saying that the defendant was his receiver. He counted that the defendant received money to trade for his profit, and also sold oxen for him. Defendant asked judgment on the ground that the sale of oxen should have been charged as bailiff's account and not as receiver's account. The count was awarded good. He then asked judgment of the writ on the ground that the Statute of Marlborough provides a remedy against bailiffs and not against receivers. The writ was upheld by the Court.			
2. Stureye v. Shotrik	5	4. Halueryate v. Gerberge	7
In a case of account the defendant asked judgment on the ground that he had lands and tenements by which he might be distrained. The plaintiff wished to reply that they were situate within the liberty of the Cinque Ports and therefore were outside the power of the sheriff of Kent. He was only allowed to reply that the defendants had not lands by which he could be distrained.			
3. Odyham v. Eylbarn	6	A writ of <i>ael</i> was quashed on the ground that part of the property claimed was not situate in one of the three villis named in the writ.	
On a writ of <i>ael</i> the tenant cannot put forward a deed by the ancestor of			
		5. Stratford v. Birche	7
On a writ of <i>cessavit</i> the tenant was not allowed to aver that he held by other services, of which the demandant was then seised.			
		6. Speye v. Ledet	8
A debt was due to three by several, each of whom was bound in the whole for payment to the three or to one of them. The Chief Justice was of the opinion that the two creditors could not bring an action of debt without the third.			
		7. Berewyk v. Brembre	9
A writ of debt was brought against two. One defendant came and acknowledged the debt. The other came and said that on the day when the writ was purchased the plaintiff was covert. Issue was joined on the question of			

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coverture and a day in Easter term was given to the plaintiff and the defendant who had acknowledged the debt for hearing judgment. According to two of the reports (which are inconsistent with the record) there was no adjournment and judgment was given that the plaintiff recover a moiety against the defendant who acknowledged the debt.

8. Ormesby v. Loveday 11

A man bound himself to a widow for two several sums of money and afterwards borrowed from her a third sum and some corn. The woman and her second husband brought an action of debt to recover the whole. As to the first two sums the debtor produced a writing of release, and as to the third sum and the corn denied that he had received them and waged his law thereof. The plaintiffs denied that the writing was the woman's and issue of *non est factum* was joined.

9. Anon. 13

This consists of two notes from different manuscripts. The first states that on a writ of debt brought against a man and his wife on a contract alleged to have been made between the plaintiff and the wife before marriage, the husband and wife waged their law that the contract was not made before the marriage. The husband first made his law and then the wife made hers. The second note shows how a law waged by a husband and wife that they owed nothing on a debt contracted before their marriage should be made.

10. Wulghes v. Pepard 13

A writ of detinue was brought for the recovery of a certain book of the price of five pounds. The Court awarded that the plaintiff should recover the said book of the price of five pounds and his damages which were assessed at ten pounds.

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11. Montfort v. Basset 14

On a writ of detinue of charters one of three defendants who are executors of a will comes into Court and before the plaintiff has counted, proffers the charters. The plaintiff is ordered to count. He then receives the charters and the defendants are not amerced.

12. Yelverton v. Yelverton 15

In his count on a writ of detinue of charters the plaintiff omitted to state in whose presence he delivered the charters to the defendant. The latter wished to wage his law that he had not received them, since the plaintiff had produced no suit. The plaintiff is allowed to amend his count and wager of law is refused. According to the report issue was joined on the delivery of the charters; but the record shows that a day was given to the parties in Trinity term.

13. Talebot v. Lancaster 16

On a writ of dower the tenant said that the king had granted by his charter the tenements in demand to the tenant's father with remainder to himself and the heirs of his body with an ultimate remainder to the king himself. The widow replied that her husband was seised after the date of the charter. She was told to make suit to the king.

14. Chaloner v. Conduit 18

On a writ of dower the tenant vouched to warranty, and the warrant vouched the heir, who came and said that, though vouched as of full age, he was an infant. He also said that the first vouchee vouched him simply and not as an assign of one to whom the husband had granted the tenements. After an adjournment till Easter term the Court awarded that the widow should not be delayed from recovering her dower.

15. Chamberleyn v. Combes 20

A man and his wife brought a writ of dower and the tenant vouched to

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warranty. Issue was joined between the demandants and the warrant, and a jury summoned for the quindene of Michaelmas 4 Edw. II. At that day the warrant was essoigned, and a day given on the morrow of St. Martin. At that day he made default and the Little Cape issued and was returned in Hilary term. The demandants then prayed seisin. The attorney of the warrant then came and said that the default ought not to harm his client, as he himself was imprisoned while on his way to the Court. As however the warrant could have been warned of the imprisonment of his attorney, and have appeared himself, and as in spite of the attorney's protest an entry on the rolls of the Court showed that he was in Court and engaged in another plea on the morrow of St. Martin, seisin was awarded to the widow. The attorney protested that the entry on the rolls was false, and prayed for relief. He was advised to proceed by bill.		19. Anon.	28
		On a writ of dower a tenant made default. On the return of the Grand Cape he said that he had nothing save jointly with his wife not named in the writ. She betook herself to the default, and the tenant waged his law that he was not summoned.	
16. St. Amand v. St. Amand	25	20. Bere v. Abyndon	29
To a writ of dower <i>unde nichil habet</i> the heir answered that the widow was already endowed by his assignment. The widow replied that she was only endowed of the land which had descended to the heir and not of the land of which her late husband had enfeoffed him.		A man brought a writ of <i>ael</i> (or perhaps entry) against a woman who made default after default. An intervener claimed that the tenements in demand were given to his father and mother who was the tenant, and the heirs of his father, so that the tenant had a life estate only. He prayed to be received as his father's heir. He could show no specialty in support of his prayer except a quitclaim made to the father and his heirs in which the tenant was not mentioned. Although the intervener was within age and the charter of feoffment was said to be in his mother's possession he was not received, and the demandant recovered, apparently by collusion with the mother.	
17. Hill v. Grave	26	21. Hay v. White	32
A vouchee alleged that part only of the lands in demand were comprised in the charter by which he was vouched. He was driven to warrant the whole as the tenant was ready to aver that they passed entirely.		On a writ of entry <i>ad terminum qui preterit</i> the tenant made default after default. Thereupon the son and heir of the tenant's husband came and claimed to be received saying that his father held these tenements and endowed her, and that on his father's death in seisin of the same he himself had assigned them to her in dower. He was not received, but issue was joined on the question whether the tenant held in dower or by the demise of the demandant's father as the writ stated. The intervener found surety for answering for the issues pending the inquest.	
18. Dunhall v. Bernewell	27	22. Broke v. Loveden	36
On a writ of dower a man vouched by his father's deed was allowed to say that his father died seised of the lands demanded, and that the tenants had nothing therein by the charter. Issue was joined on this.		On a writ of entry <i>ad terminum qui preterit</i> brought to recover a messuage and seven acres of land the	

tenants vouched to warranty; and on the vouchee appearing they produced a quitclaim by which he bound himself to warrant the messuage only. As to the messuage issue was joined on the question whether the tenants were seised when the quitclaim was made. As to the land the tenants say that the vouchee must warrant as it is within the precinct of the messuage and of its appurtenances as parcel. On this point judgment was reserved.

23. Leighton v. Hegham 41

A writ of entry *ad terminum qui preterit* in the *post* was brought by two men and their wives to recover property which they claimed to be the right and inheritance of their wives; but since the writ stated that the property ought to revert to the husbands and their wives as if the husbands were co-heirs with their wives it was abated.

24. Wyke v. Coleshull 44

A writ of entry by reason of an escheat was brought by a husband and his wife in right of his wife, and by her two sisters. The writ stated that the property in demand ought to revert to the husband and wife and her sisters as if they were four parceners. Nevertheless the writ was upheld. This case was heard in Easter term 3 Edw. II. and the decision seems to have been contrary to that in the following Hilary term in Case 23. It was also objected in the present case that the escheat was claimed by reason of a trespass for which a certain person was disinherited, and that this was not a cause of felony according to the law and custom of the realm whereby tenements should revert as an escheat. On this point judgment was reserved.

25. Castle Ralph v. St. Mary Winchester 45

A writ of entry *cui in uita* was brought by a widow against an abbes to recover one toft thirty acres of land and twenty acres of wood in a

certain place. The abbes put forward in bar of the action a fine of half a virgate of land and seven acres of wood in the same place, by which the husband and the demandant granted these tenements to be the right of the predecessor of the abbes as those which she had of her gift; and said that the tenements put in view were the same as those comprised in the fine. The demandant replied that a half virgate in the particular neighbourhood comprised a smaller quantity of land than that demanded and asked for an answer as to the remainder. The Court compelled the demandant to answer whether the tenements put in view were comprised in the fine; and issue was joined on this point.

26. Muchet v. Hundringham 47

A writ of entry *dum fuit infra etatem* was brought against a man, who said that he held for the term of his life by the demise of the demandant to him with a reversion to others. He prayed aid of the reversioners who came and said that the demandant had afterwards granted the reversion of the tenements, when in the seisin of the tenant for life to them by the writing which they produced. Issue was joined on the infancy of the demandant at the date of the writing and not at the date of the demise to the tenant for life.

27. Hoinuill v. Le Suir 48

A writ of entry *dum fuit non compos mentis* was brought against a man and his wife, and other tenants, each of different parcels of land. The wife's name was improperly omitted in three clauses in the writ. The tenants one by one asked judgment, and the writ was quashed.

28. Gascelyn v. Ryure 49

A writ of entry *cui in uita* was brought by a husband and wife of tenements which she claimed to hold to her and the heirs of the body of her

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| late husband. They counted that 'this is her right.' The tenant asked judgment of this count on the ground that the writ made no mention of 'her right.' The count was awarded good. The tenant then challenged the writ, on the ground that it should have said 'which she claims as her right of the gift etc.' The writ was upheld and the tenant then asked for view, which he was allowed. | | he asked judgment. His objection was sustained and the plaintiff replied that the tenements comprised in the charter were not parcel of those in demand. | |
| 29. Baxman v. Havering | 51 | 33. Beaufitz v. Faulkener | 58 |
| A writ of entry <i>cui in uita</i> in the <i>post</i> was brought against a tenant who was alleged to have had entry after the lease which the husband had made to a certain person. The tenant answered that she had entry <i>by</i> this person, and that a writ within the degrees would lie. The demandant denied that she had entry by this person, but was driven to say by whom she entered. On this issue was joined. | | A formedon in descender was brought in which a gift was made to a woman in tail. She married twice and on her death her only son by the first marriage entered and alienated. After his death, her son by the second marriage brought this writ in which the younger son was made heir of the elder, although he was of the half-blood. The writ was upheld by the Court. | |
| 30. Tony v. Conduit (1) | 52 | 34. Blunt v. Belacumbre | 62 |
| (1) A writ of entry was brought against two tenants, one of whom made default. The Grand Cape issued, and on the day of its return he made default again. Seisin of a moiety was refused to the demandant, as the other tenant was ready to answer for the entirety. | | A writ of formedon was brought against a man who made default. His wife who was named in the writ intervened, and vouched an infant without charter. She was driven to waive her voucher. | |
| 31. Tony v. Conduit (2) | 54 | 35. Pomeray v. Raley | 65 |
| (2) In a <i>cui in uita</i> the tenant wished to aver that the demandant had nothing in the tenements save as a wife. He was compelled to say that she had nothing of the gift of him whom she alleged in her writ to have enfeoffed her and her husband. | | In a writ of formedon in descender it was stated that the tenements in demand should, after the death of the husband and wife to whom they had been granted in frankmarriage, descend to their grandson as cousin and heir. According to the report it was held that the writ was good in spite of the omission of their son who never attained an estate. | |
| 32. Gureward v. Le Feure | 55 | 36. Lilleburn v. Draper | 66 |
| A writ of entry <i>sur disseisin</i> was brought against a tenant who produced a charter with warranty made by the demandant to the persons alleged in the writ to be the disseisors, and while they were in seisin of the tenements in demand. As the assign of such persons | | On a writ of formedon in descender a tenant put forward the charter of the demandant's father by which he gave the tenements to the tenant and bound himself to warranty. The demandant wished to aver that he had no assets by descent on the day of the purchase of the writ; but this was not allowed, and issue was joined on the question whether he had assets by descent when his father died. | |
| | | 37. Anon. | 70 |
| | | A tenant vouched a certain person to warranty. Thereupon a man in | |

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court of the same name and from the same vill entered into the warranty. The tenant offered to aver that this was not the man whom he had vouched; but as he was unable to assign a different name or a different vill for the person who appeared, judgment was given that the demandant recover against the tenant and the tenant against the man who had entered into the warranty.

38. Reading v. Stoke 71

A writ of mesne was brought by an abbot who was asked by the mesne what he had to prove the acquittance. He produced a fine by which the mesne's mother and her husband bound themselves and her heirs to acquit a predecessor of the abbot and his successors. The mesne granted the fine, but said that he had no assets by descent from his mother, since her inheritance was in the possession of his father-in-law as tenant by the courtesy. The abbot was ready to aver that the mesne had assets by descent from his mother at a place which he named. The Court held that if the mesne had assets by descent from his mother he must acquit the demandant; but that if he had not the latter must wait. The Sheriff was therefore ordered to distrain the mesne if he have lands by descent from his mother.

39. St. John of Jerusalem v. Staunton 77

A writ of mesne was brought by a prior who held a manor of the mesne in fee farm, to wit, by rent and fealty. He demanded acquittance of homage for which the chief lord was distraining him, and based his claim on receipt of services, and the fact that the mesne's ancestors had done homage in acquittance of himself and his predecessors from time immemorial. The mesne was not allowed to reply that his grandfather had bought the seignoury in the time of King Henry III. and that therefore the plaintiff could not base

his claim on prescription from time immemorial. He accordingly denied that he or his ancestors had ever acquitted the prior or his predecessors of homage.

40. Rungefer v. Latimer 80

A tenant held of a mesne two tenements, and the mesne held them of different lords. The tenant specified one tenement only in his writ, but in his count he demanded acquittance of both tenements. The variance was challenged; and according to the report the writ was quashed. This case was heard in Michaelmas term, and adjourned to this term. See Vol. IV. p. 130.

41. Heyford v. Cooper 82

A man had two brothers. On his death the daughter of the younger brother entered, and afterwards abated a writ of mortdancestor brought by the son of the elder brother by the exception of 'the same descent.'

42. Latymer v. Foxton 84

Two parceners brought a writ of naifty and one of them did not sue. It was awarded that they take nothing by their writ. The record, however, is silent about the failure of one of the parceners to appear.

43. Ferlington v. Fleming 85

An assize of novel disseisin was brought against a man and his wife and several others. The others claimed nothing in the tenements and denied the disseisin. The man and his wife put forward a quitclaim made by the plaintiff when they were in seisin of the tenements. The plaintiff replied that the quitclaim was delivered upon certain written conditions upon the performance of which the quitclaim was to be void, and said that he had performed these conditions. He asked if the assize ought to be barred, and produced a writing in support of his statement.

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| The date of this writing was four days later than that of the quitclaim. The tenants asked if they need answer the writing which the plaintiff had produced. The case was adjourned from the Court of the justices who took the assize at York into the Common Bench in which Court it was discussed on two different days. On a third day the parties appeared at the bar by agreement and the tenants produced a new deed of release by the plaintiff, and judgment was given accordingly. According to the record of the assize the plaintiff claimed that he had entered into the tenements after the performance of the condition and was subsequently disseised by the tenants. Nothing is said of this in the reports of the discussion in the Common Bench. | | were by enquiry only, and issue is joined. Each of the other two wages his law. | |
| 44. <i>Shrewsbury v. Shrewsbury</i> . . . | 93 | 46. <i>Bardolf v. Bardolf</i> . . . | 99 |
| An abbot brought a writ of nuisance against the commonalty of a town complaining that they had wrongly raised a fair on 24 to 26 July which was a nuisance to his fair in the same town on 31 July and 1 to 3 August. The commonalty say that the town is the King's free borough and that they are his burgesses, and ask that the abbot show his title. He states that he found his church seised and asks judgment. The commonalty produce the King's charter granting it the fair and ask judgment. The abbot replies that he claims from time immemorial. After many adjournments issue is joined as to whether the abbot had a fair on the day of the purchase of the writ. | | A <i>quid iuris clamat</i> is brought against a woman holding for the term of her life by the lease of the conusor, who was bound to warranty and acquittance. She refuses to attorn on the ground that the conusee who is a married woman is within age and cannot be compelled to warrant to her or to acquit her. According to most of the reports it was awarded that she should not attorn. The record shows that after several adjournments the infant died. The husband who was entitled by the fine to the fee simple in remainder bound himself to warranty and acquittance during the life of the tenant, who thereupon attorned. | |
| 45. <i>Clerbek v. Lincoln</i> . . . | 97 | 47. <i>Anon. v. Earl of Hereford</i> . . . | 104 |
| A writ of attachment is brought against a bishop and two others on the ground that they sued a plea of lay chattels before themselves in the Court Christian. The bishop denies that he sued the plea apparently because the proceedings in the ecclesiastical court | | After the Statute of Quia Emptores became operative the tenant of four manors enfeofed another of one of them. The chief lord refused the homage and fealty of the feoffee, but his bailiff received a fourth part of the rent reserved upon the manors. In proceedings in replevin the chief lord avowed for rent arrear by the tenant of the four manors. On the feoffee objecting that the chief lord could not avow upon anyone but himself, the chief lord said that he avowed for rent in arrear at the time when the feoffment was made. The Chief Justice approved of this avowry. This report is probably misplaced. | |
| | | 48. <i>Randolf v. Bavent</i> . . . | 106 |
| | | A lord avowed upon a tenant for suit arrear of which he claimed to have been seised by the hands of the tenant's feoffor. The tenant replied that his feoffor was enfeofed to hold by fealty and rent for all services, and that he himself was enfeofed jointly with another to hold to himself and another | |

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and the heirs of himself. He was refused aid of his joint tenant. The plaintiff then objected that the feoffor of the avowant was never seised of the suit. A day was given to the parties in Easter term.

49. *Prude v. Beke* 111

A plaintiff brought a writ of replevin in this term for the wrongful taking of beasts, on which issue was joined. He was not allowed to bring another writ under the Statutes of Marlborough (c. 21) for the same taking.

50. *Pecham v. Poynz* 112

A lord avowed for a distress made for an aid for the marriage of the King's daughter due from one half of a knight's fee. The tenant replied that he held the fourth part of a knight's fee only, and that he had paid the aid due therefrom. He was not allowed to aver both the tenancy and the payment. Issue was joined on the tenancy.

51. *Fraunceys v. Latimer* 114

On a writ of replevin a lady avowed for homage and fealty in arrear upon a tenant for life, who prayed aid of his lessor. The Chief Justice refused aid saying that tenants for life could not have it by reason of the feebleness of their estates. The tenant then pleaded 'hors de son fee' and issue was joined. The reporter states that aid was formerly granted in such cases.

52. *Cressy v. Gratton* 115

On a writ of replevin a lord avowed for himself and his wife and made cognizance as bailiff of his wife's sister and her husband for homage and suit arrear from sixteen bovates of land which the plaintiff held in right of his wife of the husbands in right of their wives. The plaintiff has aid of his wife and they reply that they hold the third part of certain lands by the rent of a pair of gloves for all service save foreign service by the deed of the great-

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grandfather of the sisters which they produce; and they also produce a fine by which the grandfather of the sisters granted them the third part of other lands to hold with the lands granted by their great-grandfather by the render of a pair of gloves and the service of the third part of a knight's fee for all service. They also said that they held the land comprised in the charter as the third part of a manor and not as sixteen bovates; and asked if the avowants could avow against the deeds of their ancestors. The avowants had aid of their parceners, who came, and joined in asking that the plaintiffs should hold to one or other of the deeds.

53. *Ledewych v. Huford* 124

On a writ of replevin a lord avowed for scutage arrear from two parts of a manor which the plaintiff held of him by homage fealty and the service of two parts of a knight's fee; and he alleged that his father was seised of these services by the hands of the tenant's father. The tenant replied that he held a certain number of acres of land of the avowant by homage fealty and the service of a moiety of a knight's fee. Issue was joined on whether the avowant's father was seised of the scutage of two parts of a knight's fee by the hands of the tenant's father.

54. *Anon.* 125

A lord avowed for services upon a tenant who replied that he was jointly enfeoffed with another, and prayed aid of him. Aid was refused on the ground that the tenant alone had attorned to the lord.

55. *Anon.* 126

A lord avowed upon an abbot for rent issuing from two tofts. The place in which he avowed the taking was outside the tofts. Thereupon the abbot asked judgment. The lord said that he was lord of the vill, that the place of

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the taking was common of pasture for the whole vill, and that it was lawful to distrain in common of pasture appendant to the soil whence the rent issued. Return of the beasts was ordered.		given on the quindene of St. Martin, and the defendant objected that judgment could only be actually given on the fourth day of that return day, which was the first day on which the estrepment was alleged to have been done, and (as regards the first day) the alleged estrepment was therefore alleged to have been made before the judgment. This plea was not allowed.	
56. <i>Gren v. Berewyk</i>	127	The first report was probably a case of estrepment at common law; the second is expressly stated (though possibly erroneously) to be a case of estrepment under the Statute of Gloucester; and the case of <i>Wendlyng v. Ware</i> was undoubtedly one of estrepment at common law.	
An action of trespass was brought against a man for snatching away and destroying four tallies by which the defendant was bound to the plaintiff in ten pounds. The defendant replied that a tally was not sufficient specialty for recovering debt, and that if the plaintiff recovered damages his action in debt would still remain. According to the report an issue of not guilty was joined.		58. <i>Divers Notes</i>	129
57. <i>Wendlyng v. Ware</i>	128	These occur in various manuscripts; and some of them are probably the insertions of transcribers rather than the work of reporters. They relate to the following matters:—	
The record of this case shows that an enquest was taken in the country on a writ for the recovery of land on 11 September 1309, and a verdict given in favour of the demandant. Seisin was not delivered in pursuance of the judgment in the Common Bench until 20 October 1309. Between these dates the tenant was alleged to have made estrepment, and the demandant having brought a writ in Hilary term 1310 recovered damages three years later. The date of the order of the Common Bench in 1309 is not stated in the record.		(a) Enlargement of avowry.	
The reported cases differ from one another; and it is improbable that either of them is the same case as the one of which the record is printed on p. 129. According to the first report the defendant wished to aver that no estrepment was done between the day when judgment was delivered in the Common Bench and the day of delivery of seisin; but offered no averment with respect to the period between the enquest and the judgment. The Court held that the day of the enquest and the day of the judgment were to be treated as one.		(b) Enrolment of process in <i>monstravit</i> .	
In the second report, judgment was		(c) Sheriff's return in <i>monstravit</i> .	
		(d) Abatement of a writ of <i>precipe</i> by joint tenure.	
		(e) Tenant's answer in <i>cessavit per biennium</i> .	
		(f) Infancy of an appealor in robbery.	
		(g) Abatement of a writ of dower by joint tenure.	
		(h) Enfranchisement of a villain by his appointment as his lord's attorney.	
		(i) Default by vouchee in mortdancestor.	
		(k) Prayer for aid by a vicar.	
		(l) Exception in bar of an assize by a bailiff.	
		(m) Acquittance by demandant before the return of the great <i>Cape ad valenciam</i> .	
		(n) Production of a quitclaim made in Scotland in bar of an action.	
		(o) Alleged necessity for insertion	

in writ of baptismal name of an abbot bringing an action.

(p) Claim to abate a writ after default.

(g) Default after *prece parcium*.

(r) Recognisance of a large sum in Common Bench.

(s) Power of a general attorney to appoint a special attorney.

(t) Process in resummons.

(u) Rights of termor to crop after the expiration of his term.

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59. Cases from Fitzherbert's Abridgement 134

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These notes are attributed by Fitzherbert to 4 Edw. II., but some of them are perhaps wrongly dated; and the identification of several of them is not free from doubt.

(a) Account; (b) Avowry; (c) Champerty; (d) Damage; (e) Devise; (f) Duress; (g) Entry; (h) Essoign; (i) Exchange; (k) Warranty of Charter; (l) Law; (m) Mesne; (n) Variance.

EASTER TERM, 4 EDW. II.

1. Box v. Palmer 137

In a case of *monstravit de compoto* the defendant asked judgment on the ground that he had lands whereby he could be distrained. An enquest found that he had a messuage worth six shillings a year in right of his wife. The writ stood. On the plaintiff counting that the defendant ought to render an account to him of a certain sum the latter acknowledged the receipt of part thereof but denied that of the remainder. An enquest on the amount received was refused. The Court directed the account to be taken on the amount of which the defendant acknowledged the receipt.

2. Anon. 140

A writ of *monstravit de compoto* was sent to the sheriff of one county, and the plaintiff counted that the defendant was his receiver in another. The plaintiff was refused leave to seek a better writ, and his writ was abated.

3. Anon. 140

A demandant who recovered his pasture by a writ of admeasurement was refused damages on the ground that the plea always has its issue in the right.

4. Strode v. Prior of Lodres 141

A judicial writ of champerty concerning lands in one county was addressed to the sheriff of another county. It was abated but the plaintiff was

told that he might have another judicial writ addressed to the sheriff of the county in which the lands were situate.

5. Kellestekmur v. Lanbrunmur 143

A defendant in a writ of contribution is not allowed his age. The writ is founded upon the Statute of Marlborough (c. ix.), and cannot be used unless contribution has been made since that Statute was enacted.

6. Wroteham v. Canewold 147

A man brought a writ of covenant on the ground that at the request of the defendant he had agreed to become a pledge for an apprentice, and that the defendant had covenanted to acquit him against all claims by the master of the apprentice, and had failed so to do. The case was settled by leave of the Court.

7. Marton v. Fannel 148

A writ of covenant was brought to enforce a lease granted by the great-grandfather of the defendant to the grandfather of the plaintiff for a term of twenty years. The grandfather was seised of the tenements demised by the lease for two years and was then ousted by the great-grandfather. The Court held that a covenant for a term of years is like a chattel, for the recovery of which the action belongs to the executors rather than to the heir. The plaintiff was non-suited.

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| 8. Risebury v. Risebury | 149 | wife in proof of which he put forward a tally sealed with the seal of the wife while she was sole. The defendants were not allowed to wage their law against this tally, on the ground that it was sealed. Issue of <i>non est factum</i> was then joined. It appears that the Chief Justice would not have insisted on this issue, as a sealed tally was of less weight than a sealed writing; but he would have allowed an averment by the defendants that they owed nothing. If the first report, which is from a good manuscript, can be trusted, he attached importance to the fact that the plaintiff was a merchant. | |
| <p>A writ of covenant upon which a fine was to be levied comprised two messuages and fifty-six acres of land, but the licence to agree was granted for one messuage and twenty acres only. If the report has been correctly referred to this licence which is printed on p. 150, the reason for the difference was that one messuage and thirty-six acres were held of the King in chief, and letters patent authorising the alienation had not been obtained. No foot of a fine has been found in which the parcels correspond with those in the licence to agree; but a fine was levied in the same term of one messuage and seventy acres of land and three acres of meadow. This may include not only the messuage and twenty acres of land in the licence to agree, but also fifty acres of land and three acres of meadow for which a separate writ and licence had been obtained.</p> | | | |
| 9. Yelverton v. Reppes | 150 | 11. Upton v. Milton | 156 |
| <p>A creditor appointed his wife and his debtor Lawrence of Reppes to be executors of his will. The wife died and appointed three other persons to be executors of her will. Lawrence and these three persons as the executors of the creditor brought a writ of debt upon a bond against Lawrence himself who as plaintiff was called Lawrence the son of Ralph and as defendant Lawrence of Reppes. After summons and severance as plaintiff he appeared as defendant and objected that he was called Lawrence of Reppes in the will, and that Lawrence of Reppes the executor was not so named as executor in the writ. He asked judgment and the case was adjourned till Trinity term when according to the reports the plaintiffs were non-suited.</p> | | | |
| 10. Finchingfeld v. Byrcho | 153 | <p>A defendant acknowledged a debt, but produced an acquittance testifying payment, which acquittance the plaintiff denied. Issue of <i>non est factum</i> was then joined. At the day of the enquest the defendant failed to appear. Accordin to the report judgment was thereupon given against him on account of his acknowledgement of the debt, notwithstanding his production of the acquittance.</p> | |
| <p>A citizen of London brought an action of debt against a man and his</p> | | <p>12. Schench v. Waldeschef</p> | |
| | | 157 | |
| <p>A man and his wife levied a fine of a manor of which the husband held a moiety only in right of his wife. Another man and his wife who claimed to hold the other moiety brought a writ of deceit against the man and his wife who levied the fine and apparently against the other party or parties thereto. The chief defendant objected to the claim for damages on the ground that no cause of damage had been assigned in the demonstration. The Court overruled the objection and the parties had a day given to them in the following Michaelmas term. It appears from the fine that the whole property was thereby limited to the husband and wife and his heirs.</p> | | | |

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13. <i>Le Dekne v. St. Maur</i> . . .	158

A tenant for life against whom a writ of dower had been brought prayed aid of the reversioner, and having nothing to prove the form of the gift, she offered to aver it by a jury. She was ousted from her aid. Issue was joined on the demandant's husband not having been so seised that he could endow her.

14. <i>Rus v. Earl of Gloucester</i> . . .	161
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A woman brought a writ of dower against an infant as guardian of the land of another infant. The infant guardian appeared by his own guardian and said that the husband of the widow and his first wife purchased the tenements in demand jointly to themselves and the heirs of their two bodies with the reversion to the donor in fee. He asked if the second wife could demand dower. She replied that before the Statute *De Donis condicionalibus* the husband could have alienated on the birth of issue, and that by this Statute a second wife so jointly enfeoffed is not precluded from an action for dower. The case was adjourned till the following Michaelmas when the demandant was nonsuited.

15. <i>Bury v. Cambridge</i> . . .	167
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A tenant in dower vouched to warranty. At the day given for the warranty, the tenant came and asked judgment of the writ on the ground that the demandant had married while the cause was pending. The Court allowed issue to be joined on this exception, notwithstanding the voucher to warranty.

16. <i>Anon.</i> . . .	168
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A woman brought her writ of dower against a guardian who on behalf of his ward vouched another guardian to warranty. It appears from the report that the voucher stood, but the record has not been found.

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17. <i>Marum v. Le Clerk</i> . . .	169

Two brothers brought a writ of entry *cui in vita* under the Statute of Gloucester as grandchildren and heirs of the widow. It was objected that the Statute gave an action to the heir on the seisin of his mother, and not on that of his grandmother. The record shows that the objection was not allowed.

18. <i>Marum v. Markeby</i> . . .	170
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Two brothers brought a writ of entry *cui in vita* under the Statute of Gloucester as kinsmen and heirs of the widow. The tenant answered that the widow was seised after the death of her husband and alienated. This answer was not allowed on the ground that the widow might have entered herself by disseisin, and afterwards the person disseised might have recovered.

19. <i>Haselholt v. Haselholt</i> . . .	171
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A tenant replied to a writ of formedon in reverter that the demandant ought not to be answered on the ground that the tenant had previously brought an assize of novel disseisin before justices in the country against the present demandant to recover the same tenements. The present demandant in answering that assize said that he had entered into the tenements on the death of a tenant in tail as a reversioner under the form of a certain gift to a tenant in tail. To this the present tenant had replied that the gift was made in fee simple and not in fee tail, and that she was seised by the feoffment of the donee until disseised by the present demandant. She said further that it was found by the assize that the gift was made in fee simple, and that the present tenant had been seised until she was disseised by the present demandant; so that she thereupon recovered the tenements. She therefore asked judgment if the

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present action could avail the demandant and put herself upon the record of the assize. The Court ordered the record to be produced in Michaelmas term. The enrolment shows that on the day given in that term the demandant failed to sue, and judgment was given for the tenant.		the impedient's averment of seisin she recovered her presentation.	
20. <i>Daniel v. Fitzralph</i>	177	22. <i>Brae v. Prior of St. John of Jerusalem</i> :	180
A writ of mesne was brought to enforce acquittance of an aid for the marriage of the king's daughter. The mesne objected that such an aid was not a service but a tax which was not a matter of acquittance. The Court gave judgment for the plaintiff.		A man brought a <i>quare impedit</i> against a prior and counted that his great-grandfather was seised of a manor to which the advowson of the church belonged and had presented thereto, and that by reason of the manor the right of presenting had descended to him, since he was seised of the manor by descent. The prior objected that the plaintiff had not counted the descent of the presentment in the right, apparently because he had not counted of the descent of the advowson by successive presentments. At the request of the Chief Justice this exception was waived, and the prior pleaded plenarty.	
21. <i>The King v. Walsay</i>	178	23. <i>Daumory v. Hocclive</i>	183
The king brought a <i>quare impedit</i> to recover the presentation to a church to which the grandfather of an infant in the king's ward had presented in right of his wife. The impedient replied that the advowson was annexed to a certain messuage which the grandfather held by the courtesy; and that he had presented when tenant by the courtesy. After the grandfather's death his son and heir demised the messuage to the impedient for life, and she was therefore entitled to present. For the king it was urged, according to the report, that the impedient had not shown how the advowson was appurtenant to the messuage, and according to the record that no specialty had been shown in evidence of the estate which she claimed in the advowson; and judgment was asked accordingly. To this the impedient replied that the king had made no answer to the seisin of the messuage to which the advowson was appurtenant, which seisin she was willing to aver. A day was given to the parties in Trinity term. The record shows that the king then stayed the proceedings by a writ of privy seal. Afterwards he directed by another writ of privy seal that the proceedings should be continued, and on his refusing		A writ of <i>quid iuris clamat</i> was brought against a tenant for a term of eleven years. He came and claimed the fee simple by a feoffment made by a certain person to him and his wife and his heirs. The conusee replied that this feoffor had enfeoffed the conusor and his heirs, and that afterwards a certain woman, to whom the feoffor had bound himself before the feoffment, sued a writ under the Statute of Merchants for having seisin of the lands which were thereupon delivered to her; and she demised her interest therein to the tenant against whom the writ was brought. The charter of the feoffor to the conusor was of an earlier date than his charter to the tenant and his wife. The case was adjourned.	
		24. <i>Plesele v. Spalding</i>	186
		A writ of <i>quid iuris clamat</i> was brought against a man and his wife who held in dower of the conusor. They came and claimed to hold to themselves and the heirs of the husband under a fine made between themselves as plaintiffs, and the father of the	

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conusor as impeding with a clause of warranty. The conusee answered that before the date of the fine the father had granted the reversion of the tenements which they held in dower to the conusor, and that upon that grant the tenants had attorned, and this he was ready to aver. After an adjournment the Court awarded that the tenants should go quit as the conusee could not be admitted to the averment against the fine, especially when he showed no specialty.

25. *Bomund v. Bomund* 187

A writ of *quid iuris clamat* was brought against a widow who held under a fine by which the tenements were granted to her late husband and herself and the heirs of their two bodies begotten. The husband died leaving no issue by his wife, who therefore claimed fee tail. The conusee's objection that on the death of the husband his widow had a life estate only by reason of the possibility of issue extinct was not upheld.

26. *Vaus v. Babraham* 189

A writ of *quid iuris clamat* was brought against a man and his wife who claimed the fee under a charter to her first husband and herself and their heirs. The conusee answered that they could not claim such an estate because a fine had been levied since the date of the charter between her first husband and herself as plaintiffs, and their donors as impedients by which an estate was limited to him and to her and the heirs of him, so that she had under the fine a life estate only. To this the tenants replied that the fine having been levied on a writ of warranty of charter witnessed the wife's seisin which she had continued without interruption; and also that she was not present in Court, and was not examined when the fine was levied. Judgment was given in favour of the tenants. A report of this case appears in Vol. I. on pp. 14, 15. Our late

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Literary Director there suggested that the variance between the two limitations was due to some mistake. It must be remembered, however, that limitations made to two persons and their heirs were not permitted in fines, and that the variance was therefore a necessity.

27. *Swaby v. Farford* 190

A lease was made to a man and his wife for their two lives, and afterwards their lessor granted the tenements comprised therein to the husband and his heirs by a charter containing the words *dedi concessi et confirmaui*, and also a clause of warranty. There was no release of the life estate, and after the death of the lessor his son granted the reversion on the lease to another by a fine. The grantee brought a writ of *quid iuris clamat* against the widow, who claimed to hold for life. Her late husband's son intervened and asked that she should not attorn to his disinheritance. It was awarded that the woman should not attorn but should go without day.

28. *Saunton v. Thetelthorp* 193

A fine was levied of a manor which a man and his wife and another held for a term of years. A *quid iuris clamat* was brought against the tenants who made due acknowledgement; but the manor or possibly one of the parties was differently named in the writ and the note. The Chief Justice ordered the chirographer to amend the writ by the note.

29. *Anon* 193

A *quid iuris clamat* was brought against a woman holding in dower. It was awarded that she should go without day. A second *quid iuris clamat* was then brought against her on the same note. It appears that the earlier judgment had been given on a default and not on the principal matter; and that she was therefore ordered to make acknowledgement again.

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